

THE PRACTICE  
OF THE  
PRESIDENCY COURT OF SMALL CAUSES  
OF  
CALCUTTA.

UNDER  
THE PRESIDENCY SMALL CAUSE COURTS ACT  
(ACT XV OF 1882),

WITH  
Notes and an Appendix.

BY  
R. S. T. MAC EWEN,  
OF LINCOLN'S INN, BARRISTER-AT-LAW;  
A JUDGE OF THE PRESIDENCY COURT OF SMALL CAUSES OF CALCUTTA.

---

CALCUTTA:  
THACKER, SPINK AND CO.,  
LAW PUBLISHERS.

1883.

# CONTENTS.

## PART I. GENERAL OUTLINE OF PRACTICE.

PROCEEDINGS IN ORDINARY CASES—	Page.
The plaint ... ..	1
The fees and payment of money ... ..	6
The issue and service of the summons ... ..	7
The summoning and attendance of witnesses ... ..	12
The appearance of parties ... ..	16
The compromise of suits ... ..	18
The withdrawal of suits ... ..	19
The transfer of suits ... ..	20
The hearing ... ..	20
Judgment and decree ... ..	36
Execution of decree ... ..	39
New trial ... ..	51
Reference to the High Court ... ..	54
Re-hearing by the High Court ... ..	55
Superintendence of the High Court ... ..	56
Recovery of possession of immoveable property ... ..	57
Distress for rent ... ..	58
PROCEEDINGS IN PARTICULAR CASES—	
Death, marriage, and insolvency of parties to a suit ... ..	61
Security for costs ... ..	62
Commissions to examine witnesses, for local investigations and to examine accounts ... ..	62
Suits by or against Government or public officers ... ..	63
Suits by aliens and by or against foreign and native rulers ... ..	64
Suits by and against corporations and companies ... ..	64
Suits by and against trustees, executors and administrators ... ..	65
Suits by and against minors and persons of unsound mind ... ..	66
Suits by and against military men ... ..	67

PROCEEDINGS IN PARTICULAR CASES—		Page.
Interpleader ...	...	68
Proceedings on agreement of parties ...	...	69
Summary procedure on negotiable instruments ...	...	69
Jurisdiction under Act IV of 1876 (B.C.) ...	...	70
Officers of the Court ...	...	72
Miscellaneous ...	...	72

## PART II.

### THE PRESIDENCY SMALL CAUSE COURTS ACT.

PREAMBLE ...	...	73
--------------	-----	----

#### CHAPTER I.

PRELIMINARY—		Section.	Page.
Short title ...	...	1	73
Commencement ...	...		
Repeal of enactments ...	...	2	74-5
Reference in previous Acts ...	...	3	75-6
Amendment of Act ...	...	4	76
"Small Cause Court" defined ...	...		

#### CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT—			
Courts of Small Causes established ...	...	5	76
Court to be deemed under superintendence, &c., of			
High Court ...	...	6	76-7
Appointment, suspension and removal of Judges ...	...	7	77
Rank and precedence of Judges ...	...	8	78
Power to make rules ...	...	9	78
Chief Judge to distribute business of Court ...	...	10	78-9
Procedure in case of difference of opinion ...	...	11	79
Seal to be used ...	...	12	79
Appointment of Registrar and ministerial officers ...	...	13	80
Powers and duties of such officers ...	...		
Registrar may be invested with powers of a Judge			
in suits not exceeding twenty rupees ...	...	14	80-1
Judge or other officer not to practise or trade ...	...	15	81

#### CHAPTER III.

LAW ADMINISTERED BY THE COURT—			
Questions arising in suits, &c., under Act to be decid-			
ed according to law administered by High Court	...	16	82

# CONTENTS.

ix

## CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS—	Section.	Page.
Local limits of jurisdiction of Court ... ..	17 ...	82
Suits in which Court has jurisdiction ... ..	18 ...	82-91
Suits in which Court has no jurisdiction ... ..	19 ...	91-4
Court may by consent try suits beyond pecuniary limits of jurisdiction ... ..	20 ...	94-5
Suits by and against officers of Court ... ..	21 ...	95-6
Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court ... ..	22 ...	97

## CHAPTER V.

PROCEDURE IN SUITS--		
Portions of Civil Procedure Code extending to the Court ... ..	23 ...	97-8
No written statement except in cases of set-off ...	24 ...	98-9
Return of documents admitted in evidence ...	25 ...	99-100
Compensation payable by plaintiff to defendant in certain cases ... ..	26 ...	101-2
Decree-holder to accompany officer executing warrant	27 ...	102
Things attached to immoveable property and removeable by tenant to be deemed moveable in execution	28 ...	102-4
Discharge of judgment-debtor on sufficient security	29 ...	104-5
Court may in certain cases suspend execution of decree ... ..	30 ...	105
Execution of decree of Small Cause Court by other Courts ... ..	31 ...	105-7
Procedure when decree transferred ... ..		
Minors may sue in certain cases as if of full age ...	32 ...	107-8
Power to delegate non-judicial duties ... ..	33 ...	108
Registrar to hear and determine suits like a Judge	34 ...	108-9
Proviso ... ..		
Registrar may execute all decrees with the same powers as a Judge ... ..	35 ...	109
Decrees and orders of Registrar to be subject to new trial as if made by a Judge ... ..	36 ...	109

## CHAPTER VI.

NEW TRIALS AND RE-HEARING—		
Judgments and orders of Court final ... ..	37 ...	109-14
Power to order new trial in Small Cause Court ...		
Application for re-hearing in High Court ...	38 ...	114-15
Procedure at re-hearing ... ..	39 ...	115-16
Execution of decree of High Court ... ..	40 ...	116



## CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.	Section.	Page.
out leave ... ..	41	116-21
Service of summons ... ..	42	121-22
Order for possession ... ..	43	122-23
Such order to justify bailiff entering on property and giving possession ... ..	44	123
Bar to proceedings against Judge or officer for issuing, &c., order or summons ... ..		
Applicant if entitled to possession not to be deemed trespasser for any error in proceedings ... ..	45	124
Occupant may sue for compensation ... ..		
Liability of applicant obtaining order when not entitled ... ..	46	124-25
Application for order in such case an act of trespass		
Stay of proceedings on occupant giving security to bring a suit against the applicant ... ..	47	125-26
Proceedings to be regulated by the Code of Civil Procedure ... ..	48	126
Recovery of possession no bar to suit to try title ...	49	126

## CHAPTER VIII.

## DISTRESSES—

Local extent of chapter ... ..	50	127
Saving of certain rents ... ..		
Appointment of bailiffs and appraisers ... ..	51	127-28
Security to be given by appointees ... ..	52	128
Application for distress-warrant ... ..	53	128-29
Issue of distress-warrant ... ..	54	129
Time for distress ... ..	55	129-30
What places bailiff may force open ... ..	56	130
Property which may be seized ... ..	57	130-31
Impounding distress ... ..	58	131
Inventory ... ..	59	132
Notice of intended appraisement and sale ... ..		
Copies of inventory and notice to be filed ... ..	60	132-33
Application to discharge or suspend warrant ... ..		
Claim to goods distrained made by a stranger ... ..	61	133-34
Power to award compensation to debtor or claimant	62	134-35
Power to transfer to High Court cases involving more than Rs. 1,000 ... ..	63	135-36
Appraisement ... ..	64	136
Notice of sale ... ..		
Sale ... ..	65	136-37
Application of proceeds ... ..		

# CONTENTS.

xi

DISTRESSES—		Section.	Page.
Costs of distresses	...	66	137
Account of costs and proceeds	...	67	137
Bar of distresses except under this chapter	...	68	137-38
Penalty for making illegal distresses	...		

## CHAPTER IX.

### REFERENCES TO HIGH COURT—

Reference when compulsory	...	69	138-40
Security to be furnished on such reference by party against whom contingent judgment given	...	70	140-41
If no such security given, party to be deemed to have submitted to judgment	...		

## CHAPTER X.

### FEES AND COSTS—

Institution-fee	...	71	141-42
Fees for processes	...	72	142
Repayment of half fees on settlement before hearing	...	73	142-43
Fees and costs of poor persons	...	74	143
Power to vary fees	...	75	143
Expense of employing legal practitioners	...	76	144
Sections 3, 5 and 25 of Court Fees Act, 1870, saved	...	77	144-45

## CHAPTER XI.

### MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS—

Power to fine officers	...	78	145
Default of bailiff or other officer in execution of order or warrant	...	79	146
Extortion or default of officers	...	80	146-47
Court empowered to summon witnesses, &c.	...	81	147
Enforcement of order	...	82	147

## CHAPTER XII.

### CONTEMPT OF COURT—

Procedure of Court in certain cases of contempt	...	83	147-48
Record in such cases	...	84	148-49
Procedure where Court considers that the case should not be dealt with under section 83	...	85	149-50
Discharge of offender on submission or apology	...	86	150
Imprisonment or committal of person refusing to answer or produce document	...	87	150-51
Appeal from orders under sections 83 and 87	...	88	151

## CHAPTER XIII.

MISCELLANEOUS—	Section.	Page.
Persons by whom process may be served ...	89 ...	152
Registers and returns ...	90 ...	152
Court to furnish records, &c., called for by Local Government or High Court ...	91 ...	152-53
Holidays and vacations ...	92 ...	153
Certain persons exempt from arrest by Court ...	93 ...	153-54
No suit to lie upon decree of Court ...	94 ...	154
Place of imprisonment ...	95 ...	154
Tender in suit for anything done under Act ...	96 ...	154
Limitation of prosecutions ...	97 ...	154
<hr/>		
SCHEDULE I.—ENACTMENTS REPEALED ...	...	155
SCHEDULE II.—PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT ...	...	156-58
SCHEDULE III.—FORMS OF AFFIDAVIT, WARRANT, INVENTORY, &c. ...	...	158-60
SCHEDULE IV.—FEES FOR SUMMONSES AND OTHER PROCESSES ...	...	161

## PART III.

## THE CODE OF CIVIL PROCEDURE.

NOTIFICATION ...	...	162-70
PRELIMINARY—	...	171
Short title ...	...	171
Commencement ...	...	171
Interpretation-clause ...	2 ...	171-74
Enactments repealed ...	...	...
References in previous Acts ...	...	...
Saving of procedure in suits instituted before 1st June, 1882 ...	3 ...	174-75
Appeals pending on 29th July, 1879 ...	...	...
Presidency Small Cause Courts ...	8 ...	175-76

## PART I.—OF SUITS IN GENERAL.

## CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND *Res Judicata*—

No person exempt from jurisdiction by reason of descent or place of birth ...	10 ...	176
Pending suits ...	12 ...	176-77
<i>Res judicata</i> ...	13 ...	177-78
When foreign judgment no bar to suit in British India ...	14 ...	178



CHAPTER II.

OF THE PLACE OF SUING—	Section.	Page.
Power to stay proceedings where all defendants do not reside within jurisdiction ... ..	20	178-79
Transfer of suits ... ..	25	179

CHAPTER III.

OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS—		
Persons who may be joined as plaintiffs ... ..	26	180
Court may substitute or add plaintiff for or to plaintiff-suing ... ..	27	180
Persons who may be joined as defendants ... ..	28	180
Joinder of parties liable on same contracts ... ..	29	181
One party may sue or defend on behalf of all in same interest ... ..	30	181
Suit not to fail by reason of misjoinder ... ..	31	181
Court may dismiss or add parties ... ..		
Consent of person added as plaintiff or next friend		
Parties to suits instituted or defended under section 30	32	181-82
Defendants added to be served ... ..		
Conduct of suit ... ..		
Where defendant added, plaintiff to amend ... ..	33	182
Time for taking objections as to nonjoinder or misjoinder ... ..	34	182
Each of several plaintiffs or defendants may authorize any other to appear, &c., for him ... ..	35	183
<i>Recognized Agents and Pleadors—</i>		
Appearances, &c., may be in person, by recognized agent or by pleader ... ..	36	183
Recognized agents ... ..		
Persons holding powers-of-attorney from parties		
out of jurisdiction ... ..	37	183-84
Persons carrying on trade or business for parties		
out of jurisdiction ... ..		
Service of process on recognized agent ... ..	38	184
Agent to receive process ... ..		
His appointment to be in writing and to be filed in court ... ..	41	184-85

CHAPTER IV.

OF THE FRAME OF THE SUIT—		
Suit to include whole claim ... ..		
Relinquishment of part of claim ... ..	43	185-86
Omission to sue for one of several remedies ... ..		
Claims by or against executor, administrator or heir	44	186

	Section.	Page.
OF THE FRAME OF THE SUIT—		
Plaintiff may join several causes of action. Court		
may order separation ... ..	45	186-87
Defendant may apply to confine suit ... ..	46	187
Court on hearing application may exclude some causes and order amendment ... ..	47	187

## CHAPTER V.

## OF THE INSTITUTION OF SUIT—

Suits to be commenced by plaint...	48	187
Language of plaint ... ..	49	187-88
Particulars to be contained in plaint ... ..		
In money-suits ... ..		
Where plaintiff sues as representative ... ..	50	188-89
Defendant's interest and liabilities to be shown ... ..		
Grounds of exemption from limitation-law ... ..		
Plaints to be signed and verified ... ..	51	189
Contents of verification ... ..	52	189-90
Verification to be signed and attested ... ..		
When plaint may be rejected or amended ... ..	53	190
Proviso ... ..		
Attestation of amendment ... ..		
When plaint shall be rejected ... ..	54	190-91
When rejection of plaint does not preclude presentation of fresh plaint ... ..	56	191
Suits on lost negotiable instruments ... ..	61	191

## CHAPTER VI.

## OF THE ISSUE AND SERVICE OF SUMMONS—

*Issue of Summons—*

Summons ... ..	64	191-92
No party to be ordered to appear in person unless resident within 50, or where there is railway 200, miles ... ..	67	192
Fixing day for appearance of defendant ... ..	69	192
Summons to order defendant to produce documents required by plaintiff or relied on by defendant ... ..	70	192
On issue of summons for final disposal, defendant to be directed to produce his witnesses ... ..	71	193

*Service of Summons—*

Delivery of summons for service ... ..	72	193
Mode of service ... ..	73	193
Service on several defendants ... ..	74	193
Service to be on defendant in person, when practicable, or on his agent ... ..	75	193
Service on agent by whom defendant carries on business ... ..	76	194



# CONTENTS.

XV

<i>Service of Summons—</i>	Section.	Page.
Service on agent in charge, in suits for immoveable property ... ..	77	194
Examination of serving-officer ... ..	82	194-95
Substituted service ... ..		
Effect of substituted service ... ..	83	195
When service substituted, time for appearance to be fixed ... ..	84	195
Service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service ... ..	85	195
Service, within Presidency-towns and Rangoon, of process issued by Provincial Courts ... ..	86	196
Service on defendant in jail ... ..	87	196
Procedure if jail be in different district ... ..	88	196-97
Service when defendant resides out of British India and has no agent to accept service ... ..	89	197
Service through British Resident or Agent of Government ... ..	90	197
Substitution of letter for summons ... ..	91	197-98
Mode of sending such letter... ..	92	198
<i>Service of Process—</i>		
Process to be served at expense of party issuing ... ..	93	198
Notices and orders in writing how served ... ..	94	198
<i>Postage—</i>		
Postage ... ..	95	198

## CHAPTER VII.

### OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE—

Parties to appear on day fixed in summons for defendant to appear and answer ... ..	96	199
Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing ... ..	97	199
Proviso ... ..		
If neither party appears, suit to be dismissed ... ..	98	199
In such case plaintiff may bring fresh suit ; or Court may restore suit to its file ... ..	99	199-200
Procedure if only plaintiff appears ... ..	100	200
when summons duly served ... ..		
when summons not duly served ... ..		
when summons served, but not in due time ... ..		
Procedure where defendant appears on day of adjourned hearing, and assigns good cause for previous non-appearance ... ..	101	200-1
Procedure where defendant only appears ... ..	102	201
Decree against plaintiff by default bars fresh suit ... ..	103	201

OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE—		Section.	Page.
Procedure where defendant residing out of British India does not appear		104	201-2
Procedure in case of non-attendance of one or more of several plaintiffs		105	202
Procedure in case of non-attendance of one or more of several defendants		106	202
Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person		107	202
<i>Of setting aside Decrees ex parte—</i>			
Setting aside decree <i>ex parte</i> against defendant		108	202-3
No decree to be set aside without notice to opposite party		109	203

## CHAPTER VIII.

OF WRITTEN STATEMENTS AND SET-OFF—			
Particulars of set-off to be given in written statement		111	203-5
Inquiry	...		
Effect of set-off	...	114	205
Frame of written statements	...	115	205
Written statements to be signed and verified	...	116	205
Power of Court as to argumentative, prolix or irrelevant written statements	...		
Effect of rejection	...		

## CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT—			
Ascertainment whether allegations in plaint and written statements admitted or denied		117	206
Oral examination of party, or companion of himself or his pleader		118	206
Consequence of refusal or inability of pleader to answer		120	206

## CHAPTER X.

OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS—			
Court may send for papers from its own records or from other Courts		137	207
Documentary evidence to be in readiness at hearing		138	207
Documents to be received by Court		140	207-8
Rejection of irrelevant or inadmissible documents...			

# CONTENTS.

xvii

## OF THE ADMISSION, INSPECTION, PRODUCTION, IM- POUNDING AND RETURN ■ DOCUMENTS—

	Section.	Page.
No documents to be placed ■ record unless proved	} 141 ...	208
Proved documents to be marked and filed ...		
Entries in shop-books ...		
Court may order any document to be impounded ...	143 ...	208
Provisions ■ to documents applied to material objects ...	145 ...	208

## CHAPTER XI.

### OF THE STATEMENT OF ISSUE—

Questions of fact or law may by agreement be stated in form of issue ...	150 ...	209
Court, if satisfied that agreement was executed in good faith, may pronounce judgment ...	151 ...	209-10

## CHAPTER XII.

### DISPOSAL OF THE SUIT—

If parties not at issue on any question of law or fact	152 ...	210
If one of several defendants be not at issue with plaintiff ...	153 ...	210

## CHAPTER XIII.

### OF ADJOURNMENTS—

Court may grant time, and adjourn hearing ...	} 156 ...	210-11
Costs of adjournment ...		
Procedure if parties fail to appear on day fixed ...	157 ...	211
Court may proceed notwithstanding either party fails to produce evidence, &c. ...	158 ...	211

## CHAPTER XIV.

### OF THE SUMMONING AND ATTENDANCE OF WITNESSES—

Summons to attend to give evidence or produce documents ...	159 ...	211-12
Expenses of witnesses to be paid...	} 160 ...	212
Scale of expenses ...		
Tender of expenses to witness ...	161 ...	212
Procedure where insufficient ■ paid ...	} 162 ...	212-13
Expenses if witness detained more than ■ day ...		
Time, place and purpose of attendance to be speci- fied in summons ...	163 ...	213
Summons to produce document ...	164 ...	213
Power to require persons present in Court to give evidence ...	165 ...	213
Summons how served ...	166 ...	213-14
Time for serving summons ...	167 ...	214

OF THE SUMMONING AND ATTENDANCE ■ WITNESSES—	Section.	Page.
Court may of its own accord summon as witnesses		
strangers to suit ... ..	171 ...	214
Duty of persons summoned to give evidence or produce document ... ..	172 ...	214
When they may cease to attend ... ..	173 ...	214
Consequences of failure to comply with summons ...	174 ...	215
Procedure when witness apprehended cannot give evidence or produce documents ... ..		
Persons bound to attend in person ... ..	176 ...	215-16
Consequence of refusal of party to give evidence		
when called on by Court ... ..	177 ...	216
Rules as to witnesses to apply to parties summoned	178 ...	216

## CHAPTER XV.

## OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES—

Statement and production of evidence by party having right to begin ... ..	179 ...	216
Rules as to right to begin ... ..		
Statement and production of evidence by other party	180 ...	217
Reply by party beginning ... ..		
Witnesses to be examined in open Court ... ..	181 ...	217
Power to examine witness immediately ... ..	192 ...	217
Court may recall and examine witness ... ..	193 ...	217

## CHAPTER XVI.

## OF AFFIDAVITS—

Power to order any point to be proved by affidavit	194 ...	218
Power to order attendance of declarant for cross-examination ... ..	195 ...	218
Matters to which affidavits shall be confined ... ..	196 ...	218
Oath of declarant by whom to be administered ... ..	197 ...	219

## CHAPTER XVII.

## OF JUDGMENT AND DECREE—

Judgment when pronounced ... ..	198 ...	219
Power to pronounce judgment written by Judge's predecessor ... ..	199 ...	219
Power to amend decree ... ..	206 ...	219
Decree for delivery of moveable property ... ..	208 ...	220
In suits for money, decree may order certain interest		
to be paid on principal ■ adjudged ... ..	209 ...	220
Decree may direct payment by instalments ... ..	210 ...	220
Decree when set-off is allowed ... ..	216 ...	220-21
Effect of decree as to sum awarded to defendant ...		
Certified copies of proceedings and decree to be furnished ... ..	217 ...	221

# CONTENTS.

xix

## CHAPTER XVIII.

### OF COSTS—

	Section.	Page.
Costs of applications ... ..	218	221
Judgment to direct by whom costs to be paid ...	219	221
Power of Court ■ to costs ... ..	220	221
Costs may be set-off against sum admitted or found to be due ... ..	221	221

## CHAPTER XIX.

### OF THE EXECUTION OF DECREES—

#### A.—Of the Court by which Decrees may be executed—

Court by which decree may be executed ... ..	223	222-23
Court receiving copies of decree, &c., to file same without proof ... ..	225	223-24

#### B.—Of Application for Execution—

Application for execution ... ..	230	224
Application by joint decree-holder ... ..	231	224
Application by transferee of decree ... ..	232	225
Transferee to hold subject to equities enforceable against original holder ... ..	233	
If judgment-debtor die before execution, application may be made against his representative ...	234	225-26

#### C.—Of staying Execution—

Stay of execution pending suit between decree-holder and judgment-debtor ... ..	243	226
---	-----	-----

#### D.—Questions for Court executing Decree—

Questions to be decided by Court executing decree	244	226
---	-----	-----

#### E.—Of the Mode of executing Decrees—

Cross-decrees ... ..	246	226-27
Cross-claims under same decree ... ..	247	227-28
Notice to show cause why decree should not be executed ... ..	248	228
Proviso — ... ..		
Procedure after issue of notice ... ..	249	228
Warrant when to issue ... ..	250	228-29
Date, signature, seal and delivery ... ..	251	229
Decree against representative of deceased for money to be paid out of deceased's property ...	252	229
Decree for money — ... ..	254	229-30
Power to direct immediate execution of decree for money not exceeding Rs. 1,000 ... ..	256	230
Modes of paying money under decree ... ..	257	230
Agreement to give time to judgment-debtor	257A	230-31
Agreement for satisfaction of judgment-debt ...		
Payment to decree-holder ... ..	258	231
Decrees for specific moveables ... ..	259	231-32



<i>F.—Of Attachment of Property—</i>	Section.	Page.
Property liable to attachment and sale in execution of decree ... ..	266	232-34
Power to summon and examine persons ■ to property liable to be seized ... ..	267	234
Attachment of debt, share and other property not in possession of judgment-debtor ... ..	268	234-36
Attachment of moveable property in possession of judgment-debtor ... ..	269	236
Proviso ... ..		
Power to make rules for maintenance of attached live-stock ... ..		
Attachment of negotiable instruments ... ..	270	236
Seizure of property in building ... ..	271	236-37
Seizure of property in zanánas... ..		
Attachment of property deposited in Court or with Government officer. Proviso ... ..	272	237
Attachment of decree for money ... ..	273	237-38
Order for withdrawal of attachment after satisfaction of decree ... ..	275	238
Private alienation of property after attachment to be void ... ..	276	■
Court may direct coin or currency-notes attached to be paid to party entitled ... ..	277	■
Investigation of claims to, and objections to attachment of, attached property ... ..	278	238-39
Postponement of sale ... ..		
Evidence to be adduced by claimant ... ..	279	239
Release of property from attachment ... ..	280	239
Disallowance of claim to release of property attached ... ..	281	239-40
Continuance of attachment subject to claim of incumbrancer ... ..	282	240
Power to order property attached to be sold, and proceeds to be paid to person entitled ... ..	284	240
Property attached in execution of decrees of several Courts ... ..	285	240
<i>G.—Of Sale and Delivery of Property—</i>		
<i>(a) General Rules—</i>		
Sales by whom conducted and how made ... ..	286	240
Time of sale ... ..	290	241
Stoppage of sale ■ tender of debt and costs, or on proof of payment ... ..	291	241
Officers concerned in execution-sales not to bid for or buy property sold ... ..	292	241
Defaulting purchaser answerable for loss by re-sale	293	241

# CONTENTS.

xxi

<i>G.—Of Sale and Delivery of Property—</i>	Section.	Page.
Decree-holder not to bid for ■ buy property with- out permission ... ..	} 294	... 241-42
If decree-holder purchase, amount of decree may be taken as payment ... ..	}	
Proceeds of execution-sale to be divided rateably among decree-holders ... ..	} 295	... 242-43
Proviso where property ■ sold subject to mortgage ...	}	
Proviso ... ..	}	
<i>(b) Rules ■ to Moveable Property—</i>		
Rules as to negotiable instruments and shares in pub- lic Companies ... ..	296	... 243
Payment for other moveable property sold ...	297	... 243-44
Irregularity not to vitiate sale of moveable pro- perty, but any person injured may ■ ...	298	... 244
Delivery of moveable property actually seized ...	299	... 244
Delivery of moveable property to which judgment- debtor entitled subject to lien ... ..	300	... 244
Delivery of debts and of shares ■ public Companies	301	... 244-45
Transfer of negotiable instruments and shares ...	302	... 245
Vesting order in case of other property ...	303	... 245
<i>H.—Of Resistance to Execution—</i>		
Procedure in case of obstruction to execution of decree ... ..	328	... 245-46
Procedure in case of obstruction by judgment-debt- or or at his instigation ... ..	329	... 246
Procedure when obstruction continues ...	330	... 246
<i>I.—Of Arrest and Imprisonment—</i>		
Place of judgment-debtor's imprisonment ...	} 336	... 246-48
Proviso ... ..	}	
Warrant for arrest to direct judgment-debtor to be brought up ... ..	337	... 248
Scales of subsistence-allowances ...	338	... 248
Judgment-debtor's subsistence-money ...	339	... 248-49
Subsistence-money to be costs in suit ...	340	... 249
Release of judgment-debtor ...	341	... 249-50
Imprisonment not to exceed six months ...	} 342	... 250
When not to exceed six weeks ...	}	
Endorsement on warrant ...	343	... 250

*PART II.—OF INCIDENTAL PROCEEDINGS.*

## CHAPTER XXI.

## OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES—

	Section.	Page.
No abatement by party's death, if right to sue survive	361 ...	251
Procedure in case of death of one of several plaintiffs or defendants, if right to sue survive	... 362 ...	251
Procedure in case of death of one of several plaintiffs where right to sue survives to survivors and representative of deceased	... 363 ...	251-52
Procedure where no application made by representative of deceased plaintiff	... 364 ...	252
Procedure in case of death of sole, or sole surviving, plaintiff	... 365 ...	252
Abatement where no application by representative of deceased plaintiff	... 366 ...	252-53
Procedure in case of dispute to representative of deceased plaintiff	... 367 ...	253
Procedure in case of death of one of several defendants, or of sole or sole surviving defendant	... 368 ...	253-54
Suit not abated by marriage of female party	... 369 ...	254
When plaintiff's bankruptcy or insolvency bars suit	} 370 ...	255
Procedure when assignee fails to continue suit or give security		
Procedure in case of assignment pending suit	... 372 ...	255

## CHAPTER XXII.

## OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS—

Power to allow plaintiff to withdraw with liberty to bring fresh suit	... 373 ...	255-56
Limitation-law not affected by first suit	... 374 ...	256
Compromise of suits	... 375 ...	256

## CHAPTER XXIII.

## OF PAYMENT INTO COURT—

Deposit by defendant of amount in satisfaction of claim	... 376 ...	256
Notice of deposit	... 377 ...	257
Interest on deposit not allowed to plaintiff after notice	... 378 ...	257
Procedure where plaintiff accepts deposit as satisfaction in part	} 379 ...	257-58
Procedure where he accepts it as satisfaction in full		

# CONTENTS.

xxiii

## CHAPTER XXIV.

OF REQUIRING SECURITY FOR COSTS—	Section.	Page.
When security for costs may be required from		
plaintiff at any stage of suit ... ..	380 ...	258
Effect of failure to furnish security ... ..	381 ...	258
Residence out of British India ... ..	382 ...	258

## CHAPTER XXV.

### OF COMMISSIONS—

#### A.—*Commissions to examine Witnesses—*

Cases in which Court may issue commission to		
examine witness ... ..	383 ...	259
Order for commission ... ..	384 ...	259
When witness resides within Court's jurisdiction ...	385 ...	259
Persons for whose examination commission may issue	386 ...	259-60
Commission to examine witness not within British		
India ... ..	387 ...	260
Court to examine witness pursuant to commission...	388 ...	260
Return of commission with depositions of witnesses	389 ...	260
When depositions may be read in evidence ...	390 ...	260-61
Provisions as to execution and return of commissions		
to apply to commissions issued by foreign Courts	391 ...	261

#### B.—*Commissions for local Investigations—*

Commission to make local investigations ... ..	392 ...	261-62
Procedure of commissioner ... ..		
Report and depositions to be evidence in suit ...	393 ...	262
Commissioner may be examined in person ...		

#### C.—*Commissions to examine Accounts—*

Commission to examine or adjust accounts ...	394 ...	262
Court to give commissioner necessary instructions		
Court to receive commissioner's proceedings or direct	395 ...	262-63
further enquiry ... ..		

#### E.—*General Provisions—*

Expenses of commission to be paid into Court ...	397 ...	263
Powers of commissioners ... ..	398 ...	263
Attendance, examination and punishment of wit-		
nesses before commissioner ... ..	399 ...	263-64
Court to direct parties to appear before commissioner		
Procedure <i>ex parte</i> ... ..	400 ...	264

## PART III.—OF SUITS IN PARTICULAR CASES.

## CHAPTER XXVII.

### SUITS BY ■ AGAINST GOVERNMENT ■ PUBLIC OFFICERS—

Suits by ■ against Secretary of State in Council ...	416 ...	264
Persons authorized to act for Government ...	417 ...	264

## SUITS BY ■■ AGAINST GOVERNMENT ■■ PUBLIC OFFICERS—

	Section.	Page.
Plaints in suits by Secretary of State in Council ...	418 ...	264-65
Agent of Government to receive process ...	419 ...	265
Appearance and answer by Secretary of State in Council ...	— ...	265
Attendance of person able to answer questions relating to suit against Government ...	— 421 ...	265
Service on public officers ...	422 ...	265
Extension of time to enable officer to make reference to Government ...	423 ...	265-66
Notice previous to suing Secretary of State in Council or public officer ...	424 ...	266
Arrests in such suits ...	425 ...	266
Application where Government undertakes defence	426 ...	266
Procedure where no such application made. Defendant not liable to arrest before judgment ...	427 ...	266
Exemption of public officers from personal appearance ...	428 ...	267
Procedure where decree against Government or public officer ...	429 ...	267

## CHAPTER XXVIII.

## SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS—

When aliens may sue ...	430 ...	267-68
When foreign State may sue ...	431 ...	268
Persons specially appointed by Government to prosecute or defend for Princes or Chiefs ...	432 ...	268
Execution in British India of decree of Courts of Native States ...	434 ...	268-69

## CHAPTER XXIX.

## SUITS BY AND AGAINST CORPORATIONS AND COMPANIES—

Subscription and verification of plaint ...	435 ...	269
Service on Corporation or Company ...	436 ...	269

## CHAPTER XXX.

## SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS—

Representation of beneficiaries in suits concerning property vested in trustees, &c. ...	437 ...	270
Joinder of executors and administrators ...	438 ...	270
Husband of married executrix not to join ...	439 ...	270



CHAPTER XXXI.

SUITS BY AND AGAINST MINORS AND PERSONS OF

UN SOUND MIND—

	Section.	Page.
Minor must sue by next friend. Costs ...	440	270
Applications to be made by next friend or guardian		
<i>ad litem</i> ...	441	271
Plaint filed without next friend to be <i>rejected</i> ...	442	271
Costs ...		
Guardian <i>ad litem</i> to be appointed by Court ...	443	271
Order obtained without next friend or guardian		
may be discharged ...	444	271
Costs ...		
Who may be next friend ...	445	271-72
Removal of next friend ...	446	272
Retirement of next friend ...	447	272
Application for appointment of new next friend...		
Stay of proceedings on death or removal of next friend ...	448	272
Application for appointment of new next friend ...	449	272
Course to be followed by minor plaintiff or applicant on coming of age ...	450	272-73
Where he elects to proceed ...	451	273
Where he elects to abandon ...	452	273
Costs ...		
Making and proving applications under sections 451, 452 ...	453	273
When minor co-plaintiff coming of age desires to repudiate suit ...	454	273-74
Costs ...		
When suit unreasonable or improper ...	455	274
Costs ...		
Petition for appointment of guardian <i>ad litem</i> ...	456	274
Who may be guardian <i>ad litem</i> ...	457	274
Guardian neglecting his duty may be removed ...	458	274-75
Costs ...		
Appointment in place of guardian dying <i>pendente lite</i> ...	459	275
Guardian <i>ad litem</i> of minor representative of deceased judgment-debtor ...	460	275
Before decree, next friend or guardian <i>ad litem</i> not to receive money without leave of Court and giving security ...	461	275
Next friend or guardian <i>ad litem</i> not to compromise without leave of Court ...	462	275
Compromise without leave voidable ...		
Application of sections 440 to 462 to persons of unsound mind ...	463	275
Wards of Court ...	464	276

## CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN—	Section.	Page.
Officers or soldiers who cannot obtain leave may authorize any person to sue ■ defend for them...	465	... 276-77
Person so authorized, may act personally or appoint pleader ...	466	... 277
Service on person so authorized, ■ ■ his pleader, to be good service ...	467	... 277
Service on officers and soldiers ...	468	... 277
Execution of warrant of arrest ■ cantonments, &c.	469	... 277-78

## CHAPTER XXXIII.

## INTERPLEADER—

When interpleader-suit may be instituted ...	470	... 278
Plaint in such suit ...	471	... 278-79
Payment of thing claimed into Court ...	472	... 279
Procedure at first hearing ...	473	... 279
When agents and tenants may institute interpleader-suits ...	474	... 279-80
Charge of plaintiff's costs ...	475	... 280
Procedure where defendant ■ suing stake-holder ...	476	... 280
Costs ...		

## PART IV.—PROVISIONAL REMEDIES.

## CHAPTER XXXIV.

## OF ARREST AND ATTACHMENT BEFORE JUDGMENT—

## A.—Arrest before Judgment—

When plaintiff may apply that security be taken ...	477	... 281-82
Order to bring up defendant to show cause why he should not give security ...	478	... ■
If defendant fail to show cause, Court may order him to make deposit or give security ...	479	— 282
Procedure in case of application by surety to be discharged ...	480	... 282-83
Procedure where defendant fails to give security or find fresh security ...	481	... 283
Subsistence of defendants arrested ...	482	... 283

## B.—Attachment before Judgment—

Application before judgment for security from defendant to satisfy decree, and in default for attachment of property — — ...	483	... 283-84
Contents of application ... — —		

# CONTENTS.

xxvii

<i>B.—Attachment before Judgment—</i>	Section.	Page.
Court may call on defendant to furnish security ■		
show cause ... ..	484	284-85
Attachment if cause not shown ■ security not fur- nished ... ..	485	285
Withdrawal of attachment ... ..		
Mode of making attachment ... ..	486	285
Investigation of claims to property attached before judgment ... ..	487	285
Removal of attachment when security furnished or suit diminished ... ..	488	285
Attachment not to affect rights of strangers, or bar decree-holder from applying for sale ... ..	489	285-86
Property attached under chapter not to be re-attached in execution of decree ... ..	490	286
<i>C.—Compensation for improper Arrests or Attachments—</i>		
Compensation for obtaining arrest or attachment on insufficient grounds ... ..	491	286
Proviso ... ..		

## CHAPTER XXXV.

### OF INTERLOCUTORY ORDERS—

Power to order interim sale of perishable articles ...	498	287
Power to make order for detention, &c., of subject- matter, and to authorize entry, taking of samples and experiments ... ..	499	287
Application for such orders to be after notice ...	500	287-88
Deposit of money, &c., in Court ... ..	502	288

## PART V.—OF SPECIAL PROCEEDINGS.

### CHAPTER XXXVII.

#### REFERENCE TO ARBITRATION—

Parties to suit may apply for order of reference —	506	288
Nomination of arbitrator ... ..		
When Court to nominate arbitrator ... ..	507	288-89
Order of reference ... ..	508	289
When reference ■ to two or more, order to provide for difference of opinion ... ..	509	289
Death, incapacity, &c., of arbitrators ■ umpire ...	510	289-90
Appointment of umpire by Court ... ..	511	290
Powers of arbitrator or umpire appointed under sec- tions 509, 510, 511 ... ..	512	290
Summoning witnesses ... ..		
Punishment for default, &c. ... ..	513	290

REFERENCE TO ARBITRATION—	Section.	Page.
Extension of time for making award . . . . .	514	291
Supersession of arbitration . . . . .	515	291
When umpire may arbitrate ■■ lien of arbitrators . . .	516	291
Award to be signed and filed . . . . .	517	291
Arbitrators or umpire may state special case . . . . .	518	291-92
Court may, on application, modify or correct award in certain cases . . . . .	519	292
Order ■■ to costs of arbitration . . . . .	520	292
When award or matter referred to arbitration may be remitted . . . . .	521	292-93
Grounds for setting aside award . . . . .	522	293
Judgment to be according to award . . . . .	523	293-94
Decree to follow . . . . .	524	294
Agreement to refer to arbitration may be filed in Court . . . . .	525	294
Application to be numbered and registered . . . . .	526	295
Notice to show cause against filing . . . . .	527	296
Provisions of chapter applicable to proceedings under order of reference . . . . .	528	296
Filing award in matter referred to arbitration without intervention of Court . . . . .	529	296
Application to be numbered and registered . . . . .	530	296
Notice to parties to arbitration . . . . .	531	296-97
Filing and enforcement of such award . . . . .	532	297-98

## CHAPTER XXXVIII.

## OF PROCEEDINGS ON AGREEMENT OF PARTIES—

Power to state case for Court's opinion . . . . .	527	295
When value of subject-matter must be stated . . . . .	528	296
Agreement to be filed and numbered as suit . . . . .	529	296
Parties to be subject to Court's jurisdiction . . . . .	530	296
Hearing and disposal of case . . . . .	531	296-97

## CHAPTER XXXIX.

## OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS—

Institution of summary suits upon bills of ex- change, &c. . . . .	532	297-98
Payment into Court of sum mentioned ■■ summons Defendant showing defence ■■ merits to have leave to appear . . . . .	533	298
Power to set aside decree . . . . .	534	298
Power to order bill, &c., to be deposited with officer of Court . . . . .	535	298
Recovery of cost of noting non-acceptance of dis- honoured bill or note . . . . .	536	299
Procedure in suits under chapter . . . . .	537	299
Application of chapter . . . . .	538	299-300

# CONTENTS.

xxix

## PART VII.

### CHAPTER XLVI.

OF REFERENCE TO AND REVISION BY THE HIGH COURT.	Section.	Page.
Reference of question to High Court ... ..	617 ...	300
Court may pass decree contingent upon opinion of High Court ... ..	618 ...	300-1
Judgment of High Court to be transmitted, and disposed of accordingly ... ..	619 ...	301
Costs of reference to High Court ... ..	620 ...	301
Power to alter, &c., decrees of Court making re- ference ... ..	621 ...	301
Power to call for record of cases not appealable to High Court ... ..	622 ...	301

## PART X.

### CHAPTER XLIX.

#### MISCELLANEOUS—

Exemption of certain women from personal appear- ance ... ..	640 ...	302
Local Government may exempt certain persons from personal appearance ... ..	641 ...	302
List of names of persons exempted to be kept in Courts ... ..		
Costs of commission rendered necessary by claiming privilege ... ..		
Persons exempt from arrest under civil process ...	642 ...	303
Procedure in case of certain offences ... ..	643 ...	303-4
Language of subordinate Courts ... ..	645 —	304
Power of Registrars of Small Cause Courts to state cases ... ..	646 ...	304
Miscellaneous proceedings ... ..	647 ...	304
Admission of affidavits as evidence ... ..		
Procedure when person to be arrested or property to be attached is outside district ... ..	648 ...	305
Rules applicable to all civil process for arrest, sale or payment ... ..	649 ...	305-6
Application of rules to witnesses ... ..	650 ...	306
Service of foreign summonses ... ..	650A ...	306
Penalty for resisting apprehension or escaping from custody under Code or civil process ... ..	651 ...	306-7



## PART IV.

### RULES OF PRACTICE.

	Rule.	Page.
Interpretation clause ... ..	1 ...	308-9
The Judges ... ..	2 —	309
Registrar and other officers of the Court ... ..	3-8 ...	309-10
Pleadings ... ..	9-10 ...	310
The plaint and verification ... ..	11-13 ...	310-11
Summons, process and warrant ... ..	14-27 ...	311-13
Set-off ... — ... ..	28 ...	314
Witnesses ... ..	29-32 ...	311-15
Compromise and decree ... ..	33-37 ...	315-16
Applications generally ... ..	38-43 ...	316-17
Application for new trials or to set aside a dismissal or decree ... ..	44-48 ...	317-18
Claims and complaints ... ..	49-52 ...	319
Recovery of possession of immoveable property ... ..	53 ...	319-20
Procedure in appeals and claims under Act IV of 1876 of the Bengal Council ... ..	54 ...	320
Miscellaneous ... ..	55-57 ...	320-21

## PART V.

### APPENDIX.

<i>A.</i> —Rules for the officers of the Court and the transaction of business in the offices of the Court ... ..	822-26
<i>B.</i> —Proclamation fixing the Local Limits of Calcutta ....	327-29
<i>C.</i> —Forms of Causes of Action, Plaints and Concise Statements...	330-79
<i>D.</i> —Order of the High Court relative to the hearing of references	379-80
<i>E.</i> —Rules regarding stamps used to denote fees chargeable in the Court of Small Causes of Calcutta — ... ..	380-82
<i>F.</i> —Table of Fees ... ..	383-405
<i>G.</i> —Rules and Table of Fees for Legal Practitioners ... ..	405-7
<i>H.</i> —List of Holidays observed in the Court of Small Causes of Calcutta ... ..	407-8
<i>I.</i> —Scale of Fees for serving processes sent to other Courts under sec. 85 of the Code ... ..	409-10
<i>J.</i> —Scale of Subsistence-money for judgment-debtors ... ..	410-11
<i>K.</i> —Scale of Imprisonment for judgment-debtors ... ..	411

# CONTENTS.

xxxi

Page.

## L.—FORMS—

No. 1.	Plaint ... ..	412
■ 2.	Summons to a defendant ... ..	413
■ 3.	Application for second Summons to a defendant ...	414
„ 4.	Application for Summons to ■ witness ... ..	414
■ 5.	Summons to Witness to give evidence and produce documents ... ..	415
■ 6.	General form of Application ... ..	415-16
„ 7.	Application for Warrant in execution of decree ...	416
„ 8.	Warrant of Attachment and Sale ... ..	416-17
„ 9.	Warrant of Arrest ... ..	417-18
„ 10.	Attachment before judgment with order to call for security for fulfilment of decree ... ..	418-19
■ 11.	Attachment on proof of failure to furnish security ...	419-20
■ 12.	Copy of decree and certificate for transmission to another Court ... ..	420-21
„ 13.	Notice of payment into Court ... ..	421
„ 14.	Commission to examine absent witnesses ... ..	422
„ 15.	Order of reference to Arbitration ... ..	422-23
„ 16.	Summons in summary suit on Negotiable Instrument	423-24
„ 17.	Bond for staying Warrant of Possession ... ..	424
„ 18.	Application for Distress Warrant ... ..	425
„ 19.	Security-Bond on reference to the High Court ...	425-26
„ 20.	Indemnity-Bond in Suit on lost negotiable instrument	426-27
„ 21.	Bail-Bond by a witness ... ..	427-28
„ 22.	Summons to ■ Witness to give evidence and produce documents before an arbitrator ... ..	428
„ 23.	Summons to ■ Witness to appear and produce documents before an arbitrator ... ..	428-29
„ 24.	Warrant for the arrest of ■ witness, for disobeying ■ summons to give evidence or produce ■ document...	429-30
■ 25.	Warrant for refusing to give evidence ... ..	430
■ 26.	Warrant of Possession under sec. 43 of the Act ...	431
„ 27.	Notice to show cause why Award should not be filed under sec. 525 of the Code ... ..	432

*M.*—Scale of feeding charges for live-stock attached in execution of decree ... .. 432

*N.*—Jurisdiction under Act IV of 1876, B. C. ... .. 432-33

*O.*—Bond and Warrant under sec. 29 of the Act and Rule 53 ... 434-35

**THE PRACTICE**  
**OF THE**  
**PRESIDENCY COURT OF SMALL CAUSES**  
**OF**  
**CALCUTTA,**

**UNDER**  
**THE PRESIDENCY SMALL CAUSE COURTS ACT**  
**(ACT XV OF 1882),**

**WITH**  
**Notes and an Appendix.**

**BY**  
**R. S. T. MAC EWEN,**  
**OF LINCOLN'S INN, BARRISTER-AT-LAW;**  
**A JUDGE OF THE PRESIDENCY COURT OF SMALL CAUSES OF CALCUTTA.**

---

**CALCUTTA:**  
**THACKER, SPINK AND CO.,**  
**LAW PUBLISHERS.**

**1883.**



CALCUTTA :  
PRINTED BY THACKER, SPINK AND CO.

## PREFACE.

---

By the passing of Act XV of 1882 (The Presidency Small Cause Courts Act) the whole of the law relating to the establishment, constitution, and practice of the Small Cause Courts in the Presidency-towns of Calcutta, Madras and Bombay has undergone a radical change. The previous Acts constituting the Courts and extending their jurisdiction have been repealed; the Rules of Practice have become obsolete; and the procedure, which was formerly contained in those Acts and Rules, has been replaced by a large portion of the Code of Civil Procedure (Act XIV of 1882). Mr. Ogilvy Temple's useful work, which has for many years been a guide to the practice of the Small Cause Court of Calcutta, and other books of similar character framed on the now repealed Acts and Rules of Practice, are consequently no longer of the same value. The Government of Bengal, at the time of the introduction of the new procedure, suggested the publication of the Code as applicable to the Court. Such a publication, the Lieutenant-Governor had no doubt, would be attended with success, "especially if brought out under the authority of the learned Judges." A publication of the Code alone, however, would not have met all the require-



ments of the case. It was desirable, if the work was to be done, that it should be made as complete and useful as possible. Under these circumstances, and with the view of meeting a want pretty generally expressed in the legal profession and by persons who have constant business in the Court, I have undertaken this larger work, which embraces the whole law and practice of the Court as now in force.

The plan which I have followed has been to divide the work into five Parts.

Part I is a general outline of the practice of the Court, and sets forth the principal provisions of the law as contained in the Act, Code, and Rules of Practice, which have to be observed in ordinary cases from the filing of a plaint to the execution of decree, along with other matters relating to the jurisdiction and procedure of the Court in particular cases. The subjects are arranged into chapters in their natural sequence. The marginal notes in every case refer to the section of the Act, Code or Rule of Practice under consideration, so that the text itself may readily be consulted.

Part II contains the Act. In dealing with the Act I have endeavoured shortly to explain and illustrate each section, pointing out the differences and similarities between the repealed and the present laws, and such cases and authorities as appear to be of equal applicability to the new law have been quoted. Act IX of 1850 was mainly an adaptation of the earlier English County Courts Statutes to the Presidency-towns, and many of the decisions of the Superior Courts in England with reference to these Statutes were adopted and followed in the Presi-

dency Small Cause Courts. Act XV of 1882 has, however, done away with many of these provisions, especially in matters of procedure and practice, and has brought the Presidency Small Cause Courts much more under the operation of the general law which governs the procedure in the Civil Courts of the country than had hitherto been the case. But some of the old provisions have been retained in the new Act, and in these instances the English and Indian cases are still of value.

Part III is the Code of Civil Procedure as extended and applied to the Small Cause Court of Calcutta by the Judges of the Court with the sanction of the Local Government, under Section 23 and the second Schedule to the Act. It is published exactly as it is in force. The asterisks and italics show where omissions and modifications have, in every instance, been made. The Code has already been so exhaustively treated by Mr. L. P. Delves Broughton, Mr. J. O'Kinealy and other legal writers, whose works have become standard text-books, that any attempt on my part to interpret that law would have been a work of supererogation. These books should, therefore, be consulted when points of difficulty under the Code arise. I have, however, appended a few notes to some of the sections containing such references to the Small Cause Court Act, the Rules of Practice and the Appendix, as appear necessary to explain their applicability to the Small Cause Court.

Part IV contains the Rules of Practice framed under Section 9 of the Act by the Judges of the Small Cause Court with the sanction of the High Court.

Part V is an Appendix, containing Rules defining

the powers and duties of Ministerial Officers and for the transaction of business in the offices of the Court, under Section 13 of the Act ; The Local Limits of Calcutta ; Schedules of Forms for the various proceedings in the Court ; Rules relating to References to the High Court ; Table of institution and court-fees ; Table of fees for legal practitioners ; Scale of expenses to witnesses, and other information connected with the practice of the Court.

A general Index to the whole work gives the reference to the section of the Act and Code and Rule of Practice, as well as to the page on which the information is to be found.

The book is not in all respects what I originally proposed to myself, and I am sensible of its shortcomings. I should like to have had more leisure for the work, but it has been undertaken and completed in the short intervals of a daily round of public duty. I have, however, thought it better, as a book of the kind is constantly wanted in daily practice, to issue it as it is, rather than delay its publication for the purpose of greater elaboration. My object has been to place in the hands of legal practitioners and all persons who have business in the Court a Manual which will afford ■ ready means of ascertaining all matters relating to the jurisdiction of the Court and its present practice ■ and if I have attained any measure of success in this respect, my object will have been gained.

R. S. T. MACEWEN.

*Calcutta, 1st June, 1883.*

# CONTENTS.

## PART I. GENERAL OUTLINE OF PRACTICE.

PROCEEDINGS IN ORDINARY CASES—	Page.
The plaint ... ..	1
The fees and payment of money ... ..	6
The issue and service of the summons ... ..	7
The summoning and attendance of witnesses ... ..	12
The appearance of parties ... ..	16
The compromise of suits ... ..	18
The withdrawal of suits ... ..	19
The transfer of suits ... ..	20
The hearing ... ..	20
Judgment and decree ... ..	36
Execution of decree ... ..	39
New trial ... ..	51
Reference to the High Court ... ..	54
Re-hearing by the High Court ... ..	55
Superintendence of the High Court ... ..	56
Recovery of possession of immoveable property ... ..	57
Distress for rent ... ..	58
PROCEEDINGS IN PARTICULAR CASES—	
Death, marriage, and insolvency of parties to a suit ... ..	61
Security for costs ... ..	62
Commissions to examine witnesses, for local investigations and to examine accounts — ... ..	62
Suits by or against Government or public officers ... ..	63
Suits by aliens and by or against foreign and native rulers	64
Suits by and against corporations and companies ... ..	64
Suits by and against trustees, executors and administrators	65
Suits by and against minors and persons of unsound mind ... ..	66
Suits by and against military — ... ..	67



PROCEEDINGS IN PARTICULAR CASES—		Page.
Interpleader ...	...	68
Proceedings on agreement of parties ...	...	69
Summary procedure ■ negotiable instruments ...	...	69
Jurisdiction under Act IV of 1876 (B.C.) ...	...	70
Officers of the Court ...	...	72
Miscellaneous ...	...	72

## PART II.

### THE PRESIDENCY SMALL CAUSE COURTS ACT.

PREAMBLE — ...	...	73
----------------	-----	----

#### CHAPTER I.

PRELIMINARY—		Section.	Page.
Short title ...	...	1	73
Commencement ...	...		
Repeal of enactments ...	...	2	74-5
Reference in previous Acts ...	...	3	75-6
Amendment of Act ...	...	4	76
“Small Cause Court” defined ...	...		

#### CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT—			
Courts of Small Causes established ...	...	5	76
Court to be deemed under superintendence, &c., of			
High Court ...	...	6	76-7
Appointment, suspension and removal of Judges ...	...	7	77
Rank and precedence of Judges ...	...	8	78
Power to make rules ...	...	9	78
Chief Judge to distribute business of Court ...	...	10	78-9
Procedure in case of difference of opinion ...	...	11	79
Seal to be used ...	...	12	79
Appointment of Registrar and ministerial officers ...	...	13	80
Powers and duties of such officers ...	...		
Registrar may be invested with powers of ■ Judge			
in suits not exceeding twenty rupees ...	...	14	80-1
Judge or other officer not to practise or trade ...	...	15	81

#### CHAPTER III.

LAW ADMINISTERED BY THE COURT—			
Questions arising in suits, &c., under Act to be decid-			
ed according to law administered by High Court	...	16	82

# CONTENTS.

ix

## CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS—	Section.	Page.
Local limits of jurisdiction of Court ... ..	17 ...	82
Suits in which Court has jurisdiction ... ..	18 ...	82-91
Suits in which Court has no jurisdiction ... ..	19 ...	91-4
Court may by consent try suits beyond pecuniary limits of jurisdiction ... ..	20 ...	94-5
Suits by and against officers of Court ... ..	21 ...	95-6
Costs when plaintiff sues in High Court in other cognizable by Small Cause Court ... ..	22 ...	97

## CHAPTER V.

PROCEDURE IN SUITS--		
Portions of Civil Procedure Code extending to the Court ... ..	23 ...	97-8
No written statement except in cases of set-off ...	24 ...	98-9
Return of documents admitted in evidence ...	25 ...	99-100
Compensation payable by plaintiff to defendant in certain cases ... ..	26 ...	101-2
Decree-holder to accompany officer executing warrant	27 ...	102
Things attached to immoveable property and removeable by tenant to be deemed moveable in execution	28 ...	102-4
Discharge of judgment-debtor on sufficient security	29 ...	104-5
Court may in certain cases suspend execution of decree ... ..	30 ...	105
Execution of decree of Small Cause Court by other Courts ... ..	31 ...	105-7
Procedure when decree transferred ... ..		
Minors may sue in certain cases as if of full age ...	32 ...	107-8
Power to delegate non-judicial duties ... ..	33 ...	108
Registrar to hear and determine suits like a Judge Proviso ... ..	34 ...	108-9
Registrar may execute all decrees with the same powers as a Judge ... ..	35 ...	109
Decrees and orders of Registrar to be subject to new trial as if made by a Judge ... ..	36 ...	109

## CHAPTER VI.

NEW TRIALS AND RE-HEARING—		
Judgments and orders of Court final ... ..	37 ...	109-14
Power to order new trial in Small Cause Court ...		
Application for re-hearing in High Court ...	38 ...	114-15
Procedure at re-hearing ... ..	39 ...	115-16
Execution of decree of High Court ... ..	40 ...	116

## CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVABLE PROPERTY.	Section.	Page.
out leave ... ..	41	116-21
Service of summons ... ..	42	121-22
Order for possession ... ..	43	122-23
Such order to justify bailiff entering on property and giving possession — ... ..	44	123
Bar to proceedings against Judge or officer for issuing, &c., order or — ... ..		
Applicant if entitled to possession not to be deemed trespasser for any error in proceedings ... ..	45	124
Occupant may sue for compensation ... ..		
Liability of applicant obtaining order when not entitled ... ..	46	124-25
Application for order in such case an act of trespass		
Stay of proceedings on occupant giving security to bring a suit against the applicant ... ..	47	125-26
Proceedings to be regulated by the Code of Civil Procedure ... ..	48	126
Recovery of possession no bar to suit to try title ...	49	126

## CHAPTER VIII.

## DISTRESSES—

Local extent of chapter ... ..	50	127
Saving of certain rents ... ..		
Appointment of bailiffs and appraisers ... ..	51	127-28
Security to be given by appointees ... ..	52	128
Application for distress-warrant ... ..	53	128-29
Issue of distress-warrant ... ..	54	129
Time for distress ... ..	55	129-30
What places bailiff may force open ... ..	56	130
Property which may be seized ... ..	57	130-31
Impounding distress ... ..	58	131
Inventory ... ..	59	132
Notice of intended appraisement and sale ... ..		
Copies of inventory and notice to be filed ... ..	60	132-33
Application to discharge or suspend warrant ... ..		
Claim to goods distrained made by a stranger ... ..	61	133-34
Power to award compensation to debtor or claimant	62	134-35
Power to transfer to High Court cases involving more than Rs. 1,000 ... ..	63	135-36
Appraisement ... ..	64	136
Notice of sale ... ..		
Sale ... ..	65	136-37
Application of proceeds ... ..		

# CONTENTS.

xi

DISTRESSES—	Section.	Page.
Costs of distresses ...	66	137
Account of costs and proceeds ...	67	137
Bar of distresses except under this chapter ...	68	137-38
Penalty for making illegal distresses ...	68	137-38

## CHAPTER IX.

### REFERENCES TO HIGH COURT—

Reference when compulsory ...	69	138-40
Security to be furnished on such reference by party against whom contingent judgment given ...	70	140-41
If no such security given, party to be deemed to have submitted to judgment ...	70	140-41

## CHAPTER X.

### FEES AND COSTS—

Institution-fee ...	71	141-42
Fees for processes ...	72	142
Repayment of half fees on settlement before hearing	73	142-43
Fees and costs of poor persons ...	74	143
Power to vary fees ...	75	143
Expense of employing legal practitioners ...	76	144
Sections 3, 5 and 25 of Court Fees Act, 1870, saved	77	144-45

## CHAPTER XI.

### MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS—

Power to fine officers ...	78	145
Default of bailiff or other officer in execution of order or warrant ...	79	146
Extortion or default of officers ...	80	146-47
Court empowered to summon witnesses, &c. ...	81	147
Enforcement of order ...	82	147

## CHAPTER XII.

### CONTEMPT OF COURT—

Procedure of Court in certain cases of contempt ...	83	147-48
Record in such cases ...	84	148-49
Procedure where Court considers that the case should not be dealt with under section 83 ...	85	149-50
Discharge of offender on submission ■ apology ...	86	150
Imprisonment or committal of person refusing to answer or produce document ...	87	150-51
Appeal from orders under sections ■ and 87 ...	88	151

## CHAPTER XIII.

MISCELLANEOUS—	Section.	Page.
Persons by whom process may be served ...	89 ...	152
Registers and returns ...	90 ...	152
Court to furnish records, &c., called for by Local Government or High Court ...	91 ...	152-53
Holidays and vacations ...	92 ...	153
Certain persons exempt from arrest by Court ...	93 ...	153-54
No suit to lie upon decree of Court ...	94 ...	154
Place of imprisonment ...	95 ...	154
Tender in suit for anything done under Act ...	96 ...	154
Limitation of prosecutions ...	97 ...	154
<hr/>		
SCHEDULE I.—ENACTMENTS REPEALED ...	...	155
SCHEDULE II.—PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT ...	...	156-58
SCHEDULE III.—FORMS OF AFFIDAVIT, WARRANT, INVENTORY, &c. ...	...	158-60
SCHEDULE IV.—FEES FOR SUMMONSES AND OTHER PROCESSES ...	...	161

## PART III.

## THE CODE OF CIVIL PROCEDURE.

NOTIFICATION ...	...	162-70
PRELIMINARY—	...	171
Short title ...	...	171
Commencement ...	1 ...	171
Interpretation-clause ...	2 ...	171-74
Enactments repealed ...	...	...
References in previous Acts ...	...	...
Saving of procedure in suits instituted before 1st June, 1882 ...	3 ...	174-75
Appeals pending on 29th July, 1879 ...	...	...
Presidency Small Cause Courts ...	8 ...	175-76

## PART I.—OF SUITS IN GENERAL.

## CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND *Res Judicata*—

No person exempt from jurisdiction by reason of descent or place of birth ...	10 ...	176
Pending suits ...	12 ...	176-77
<i>Res judicata</i> ...	13 ...	177-78
When foreign judgment ■ bar to suit in British India ...	14 ...	178



# CONTENTS.

xiii

## CHAPTER II.

### OF THE PLACE OF SUING—

	Section.	Page.
Power to stay proceedings where all defendants do not reside within jurisdiction ... ..	20	178-79
Transfer of suits ... ..	25	179

## CHAPTER III.

### OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS—

Persons who may be joined as plaintiffs ... ..	26	180
Court may substitute or add plaintiff for or to plaintiff suing ... ..	27	180
Persons who may be joined as defendants ... ..	28	180
Joinder of parties liable on same contracts ... ..	29	181
One party may sue or defend on behalf of all in same interest ... ..	30	181
Suit not to fail by reason of misjoinder ... ..	31	181
Court may dismiss or add parties ... ..		
Consent of person added as plaintiff or next friend		
Parties to suits instituted or defended under section 30	32	181-82
Defendants added to be served ... ..		
Conduct of suit ... ..		
Where defendant added, plaintiff to amend ... ..	33	182
Time for taking objections as to nonjoinder or misjoinder ... ..	34	182
Each of several plaintiffs or defendants may authorize any other to appear, &c., for him ... ..	35	183
<i>Recognized Agents and Pleadors—</i>		
Appearances, &c., may be in person, by recognized agent or by pleader ... ..	36	183
Recognized agents ... ..		
Persons holding powers-of-attorney from parties out of jurisdiction ... ..	37	183-84
Persons carrying on trade or business for parties out of jurisdiction ... ..		
Service of process on recognized agent ... ..	38	184
Agent to receive process ... ..		
His appointment to be in writing and to be filed in court ... ..	41	184-85

## CHAPTER IV.

### OF THE FRAME OF THE SUIT—

Suit to include whole claim ... ..		
Relinquishment of part of claim ... ..	43	185-86
Omission to sue for one of several remedies ... ..		
Claims by or against executor, administrator ■ heir ... ..	44	186

OF THE FRAME OF THE SUIT—		Section.	Page.
Plaintiff may join several	of action. Court		
may order separation	...	45	186-87
Defendant may apply to confine suit	...	46	187
Court on hearing application may exclude some			
causes and order amendment	...	47	187

## CHAPTER V.

## OF THE INSTITUTION OF SUIT—

Suits to be commenced by plaint...	...	48	187
Language of plaint	...	49	187-88
Particulars to be contained in plaint	...		
In money-suits	...		
Where plaintiff sues as representative	...	50	188-89
Defendant's interest and liabilities to be shown	...		
Grounds of exemption from limitation-law	...		
Plaints to be signed and verified	...	51	189
Contents of verification	...	52	189-90
Verification to be signed and attested	...		
When plaint may be rejected or amended	...	53	190
Proviso	...		
Attestation of amendment	...		
When plaint shall be rejected	...	54	190-91
When rejection of plaint does not preclude present-			
ation of fresh plaint	...	56	191
Suits on lost negotiable instruments	...	61	191

## CHAPTER VI.

## OF THE ISSUE AND SERVICE OF SUMMONS—

*Issue of Summons—*

Summons	...	64	191-92
No party to be ordered to appear in person unless resi-			
dent within 50, or where there is railway 200, miles	...	67	192
Fixing day for appearance of defendant	...	69	192
Summons to order defendant to produce documents			
required by plaintiff or relied on by defendant	...	70	192
On issue of summons for final disposal, defendant			
to be directed to produce his witnesses	...	71	193

*Service of Summons—*

Delivery of summons for service	...	72	193
Mode of service	...	73	193
Service on several defendants	...	74	193
Service to be on defendant in person, when practi-			
cable, or on his agent	...	75	193
Service by agent by whom defendant carries on			
business	...	76	194

# CONTENTS.

XV

<i>Service of Summons—</i>	Section.	Page.
Service ■ agent in charge, in suits for immoveable property — ...	77	194
Examination of serving-officer ...	82	194-95
Substituted service ...		
Effect of substituted service ...	83	195
When service substituted, time for appearance to be fixed ...	84	195
Service of summons when defendant resides within jurisdiction of another Court and has ■ agent to accept service ...	85	195
Service, within Presidency-towns and Rangoon, of process issued by Provincial Courts ...	86	196
Service on defendant in jail ...	87	196
Procedure if jail be in different district ...	88	196-97
Service when defendant resides out of British India and has no agent to accept service ...	89	197
Service through British Resident or Agent of Government ...	90	197
Substitution of letter for summons ...	91	197-98
Mode of sending such letter... ...	92	198
<i>Service of Process—</i>		
Process to be served at expense of party issuing ...	93	198
Notices and orders in writing how served ...	94	198
<i>Postage—</i>		
Postage ...	95	198

## CHAPTER VII.

### OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE—

Parties to appear on day fixed in summons for defendant to appear and answer ...	96	199
Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing ...	97	199
Proviso ...		
If neither party appears, suit to be dismissed ...	98	199
In such case plaintiff may bring fresh suit ; or Court may restore suit to its file ...	99	199-200
Procedure if only plaintiff appears ...	100	200
when summons duly served ...		
when summons not duly served ...		
when summons served, but not in due time ...		
Procedure where defendant appears on day of adjourned hearing, and assigns good cause for previous non-appearance — ...	101	200-1
Procedure where defendant only appears ...	102	201
Decree against plaintiff by default bars fresh suit	103	201

OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE—		Section.	Page.
Procedure where defendant residing out of British India does not appear		104	201-2
Procedure in case of non-attendance of one or more of several plaintiffs		105	202
Procedure in case of non-attendance of one or more of several defendants		106	202
Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person		107	202
<i>Of setting aside Decrees ex parte—</i>			
Setting aside decree <i>ex parte</i> against defendant		108	202-3
No decree to be set aside without notice to opposite party		109	203

## CHAPTER VIII.

OF WRITTEN STATEMENTS AND SET-OFF—			
Particulars of set-off to be given in written statement		111	203-5
Inquiry			
Effect of set-off		114	205
Frame of written statements		115	205
Written statements to be signed and verified		116	205
Power of Court as to argumentative, prolix or irrelevant written statements			
Effect of rejection			

## CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT—			
Ascertainment whether allegations in plaint and written statements admitted or denied		117	206
Oral examination of party, or companion of himself or his pleader		118	206
Consequence of refusal or inability of pleader to answer		120	206

## CHAPTER X.

OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS—			
Court may send for papers from its own records or from other Courts		137	207
Documentary evidence to be in readiness at hearing		138	207
Documents to be received by Court		140	207-8
Rejection of irrelevant or inadmissible documents...			

# CONTENTS.

xvii

## OF THE ADMISSION, INSPECTION, PRODUCTION, IM- POUNDING AND RETURN ■ DOCUMENTS—

	Section.	Page.
No documents to be placed ■ record unless proved	} 141 ...	208
Proved documents to be marked and filed ...		
Entries in shop-books ...		
Court may order any document to be impounded ...	143 ...	208
Provisions ■ to documents applied to material objects ...	145 ...	208

## CHAPTER XI.

### OF THE STATEMENT OF ISSUE—

Questions of fact or law may by agreement be stated in form of issue ...	150 ...	209
Court, if satisfied that agreement was executed in good faith, may pronounce judgment ...	151 ...	209-10

## CHAPTER XII.

### DISPOSAL OF THE SUIT—

If parties not at issue on any question of law or fact	152 ...	210
If one of several defendants be not at issue with plaintiff ...	153 ...	210

## CHAPTER XIII.

### OF ADJOURNMENTS—

Court may grant time, and adjourn hearing ...	} 156 ...	210-11
Costs of adjournment ...		
Procedure if parties fail to appear on day fixed ...	157 ...	211
Court may proceed notwithstanding either party fails to produce evidence, &c. ...	158 ...	211

## CHAPTER XIV.

### OF THE SUMMONING AND ATTENDANCE OF WITNESSES—

Summons to attend to give evidence or produce documents ...	159 ...	211-12
Expenses of witnesses to be paid...	} 160 ...	212
Scale of expenses ...		
Tender of expenses to witness ...	161 ...	212
Procedure where insufficient ■ paid ...	} 162 ...	212-13
Expenses if witness detained more than ■ day ...		
Time, place and purpose of attendance to be specified in summons ...	163 ...	213
Summons to produce document ...	164 ...	213
Power to require persons present in Court to give evidence ...	165 ...	213
Summons how served ...	166 ...	213-14
Time for serving summons ...	167 ...	214



OF THE SUMMONING AND ATTENDANCE ■ WITNESSES—	Section.	Page.
Court may of its own accord summon as witnesses		
strangers to suit ... ..	171 ...	214
Duty of persons summoned to give evidence or produce document ... ..	172 ...	214
When they may cease to attend ... ..	173 ...	214
Consequences of failure to comply with summons ...	174 ...	215
Procedure when witness apprehended cannot give evidence or produce documents ... ..		
Persons bound to attend in person ... ..	176 ...	215-16
Consequence of refusal of party to give evidence when called on by Court ... ..	177 ...	216
Rules as to witnesses to apply to parties summoned	178 ...	216

## CHAPTER XV.

## OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES—

Statement and production of evidence by party having right to begin ... ..	179 ...	216
Rules as to right to begin ... ..		
Statement and production of evidence by other party	180 ...	217
Reply by party beginning ... ..		
Witnesses to be examined in open Court ... ..	181 ...	217
Power to examine witness immediately ... ..	192 ...	217
Court may recall and examine witness ... ..	193 ...	217

## CHAPTER XVI.

## OF AFFIDAVITS—

Power to order any point to be proved by affidavit	194 ...	218
Power to order attendance of declarant for cross-examination ... ..	195 ...	218
Matters to which affidavits shall be confined ... ..	196 ...	218
Oath of declarant by whom to be administered ... ..	197 ...	219

## CHAPTER XVII.

## OF JUDGMENT AND DECREE—

Judgment when pronounced ... ..	198 ...	219
Power to pronounce judgment written by Judge's predecessor ... ..	199 ...	219
Power to amend decree ... ..	206 ...	219
Decree for delivery of moveable property ... ..	208 ...	220
In suits for money, decree may order certain interest to be paid on principal ■ adjudged ... ..	209 ...	220
Decree may direct payment by instalments ... ..	210 ...	220
Decree when set-off is allowed ... ..	216 ...	220-21
Effect of decree as to sum awarded to defendant ...		
Certified copies of proceedings and decree to be furnished ... ..	217 ...	221

# CONTENTS.

xix

## CHAPTER XVIII.

### OF COSTS—

	Section.	Page.
Costs of applications ... ..	218 ...	221
Judgment to direct by whom costs to be paid ...	219 ...	221
Power of Court ■ to costs ... ..	220 ...	221
Costs may be set-off against sum admitted or found to be due ... ..	221 ...	221

## CHAPTER XIX.

### OF THE EXECUTION OF DECREES—

#### A.—Of the Court by which Decrees may be executed—

Court by which decree may be executed ... ..	223 ...	222-23
Court receiving copies of decree, &c., to file same without proof ... ..	225 ...	223-24

#### B.—Of Application for Execution—

Application for execution ... ..	230 ...	224
Application by joint decree-holder ... ..	231 ...	224
Application by transferee of decree ... ..	232 ...	225
Transferee to hold subject to equities enforceable against original holder ... ..	233 ...	
If judgment-debtor die before execution, application may be made against his representative ...	234 ...	225-26

#### C.—Of staying Execution—

Stay of execution pending suit between decree-holder and judgment-debtor ... ..	243 ...	226
---	---------	-----

#### D.—Questions for Court executing Decree—

Questions to be decided by Court executing decree	244 ...	226
---	---------	-----

#### E.—Of the Mode of executing Decrees—

Cross-decrees ... ..	246 ...	226-27
Cross-claims under same decree ... ..	247 ...	227-28
Notice to show cause why decree should not be executed ... ..	248 ...	228
Proviso — ... ..		
Procedure after issue of notice ... ..	249 ...	228
Warrant when to issue ... ..	250 ...	228-29
Date, signature, seal and delivery ... ..	251 ...	229
Decree against representative of deceased for money to be paid out of deceased's property ...	252 ...	229
Decree for money — ... ..	254 —	229-30
Power to direct immediate execution of decree for money not exceeding Rs. 1,000 ... ..	256 ...	230
Modes of paying money under decree ... ..	257 ...	230
Agreement to give time to judgment-debtor	} 257A ...	230-31
Agreement for satisfaction of judgment-debt ...		
Payment to decree-holder ... ..	258 ...	231
Decrees for specific moveables ... ..	259 ...	231-32

<i>F.—Of Attachment of Property—</i>	Section.	Page.
Property liable to attachment and sale in execution of decree ... ..	266	232-34
Power to summon and examine persons ■ to property liable to be seized ... ..	267	234
Attachment of debt, share and other property not in possession of judgment-debtor ... ..	268	234-36
Attachment of moveable property in possession of judgment-debtor ... ..	269	236
Proviso ... ..		
Power to make rules for maintenance of attached live-stock ... ..		
Attachment of negotiable instruments ... ..	270	236
Seizure of property in building ... ..	271	236-37
Seizure of property in zanánas... ..		
Attachment of property deposited in Court or with Government officer. Proviso ... ..	272	237
Attachment of decree for money ... ..	273	237-38
Order for withdrawal of attachment after satisfaction of decree ... ..	275	238
Private alienation of property after attachment to be void ... ..	276	■
Court may direct coin or currency-notes attached to be paid to party entitled ... ..	277	■
Investigation of claims to, and objections to attachment of, attached property ... ..	278	238-39
Postponement of sale ... ..		
Evidence to be adduced by claimant ... ..	279	239
Release of property from attachment ... ..	280	239
Disallowance of claim to release of property attached ... ..	281	239-40
Continuance of attachment subject to claim of incumbrancer ... ..	282	240
Power to order property attached to be sold, and proceeds to be paid to person entitled ... ..	284	240
Property attached in execution of decrees of several Courts ... ..	285	240
<i>G.—Of Sale and Delivery of Property—</i>		
<i>(a) General Rules—</i>		
Sales by whom conducted and how made ... ..	286	240
Time of sale ... ..	290	241
Stoppage of sale ■ tender of debt and costs, or on proof of payment ... ..	291	241
Officers concerned in execution-sales not to bid for or buy property sold ... ..	292	241
Defaulting purchaser answerable for loss by re-sale	293	241

# CONTENTS.

xxi

<i>G.—Of Sale and Delivery of Property—</i>	Section.	Page.
Decree-holder not to bid for ■ buy property with- out permission ... ..	} 294	... 241-42
If decree-holder purchase, amount of decree may be taken as payment ... ..	}	
Proceeds of execution-sale to be divided rateably among decree-holders ... ..	} 295	... 242-43
Proviso where property ■ sold subject to mortgage ...	}	
Proviso ... ..	}	
<i>(b) Rules ■ to Moveable Property—</i>		
Rules as to negotiable instruments and shares in pub- lic Companies ... ..	296	... 243
Payment for other moveable property sold ...	297	... 243-44
Irregularity not to vitiate sale of moveable pro- perty, but any person injured may ■ ...	298	... 244
Delivery of moveable property actually seized ...	299	... 244
Delivery of moveable property to which judgment- debtor entitled subject to lien ... ..	300	... 244
Delivery of debts and of shares ■ public Companies	301	... 244-45
Transfer of negotiable instruments and shares ...	302	... 245
Vesting order in case of other property ...	303	... 245
<i>H.—Of Resistance to Execution—</i>		
Procedure in case of obstruction to execution of decree ... ..	328	... 245-46
Procedure in case of obstruction by judgment-debt- or or at his instigation ... ..	329	... 246
Procedure when obstruction continues ...	330	... 246
<i>I.—Of Arrest and Imprisonment—</i>		
Place of judgment-debtor's imprisonment ...	} 336	... 246-48
Proviso ... ..	}	
Warrant for arrest to direct judgment-debtor to be brought up ... ..	337	... 248
Scales of subsistence-allowances ...	338	... 248
Judgment-debtor's subsistence-money ...	339	... 248-49
Subsistence-money to be costs in suit ...	340	... 249
Release of judgment-debtor ...	341	... 249-50
Imprisonment not to exceed six months ...	} 342	... 250
When not to exceed six weeks ...	}	
Endorsement on warrant ...	343	... 250

*PART II.—OF INCIDENTAL PROCEEDINGS.*

## CHAPTER XXI.

## OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES—

	Section.	Page.
No abatement by party's death, if right to sue survive	361 ...	251
Procedure in case of death of one of several plaintiffs or defendants, if right to sue survive	... 362 ...	251
Procedure in case of death of one of several plaintiffs where right to sue survives to survivors and representative of deceased	... 363 ...	251-52
Procedure where no application made by representative of deceased plaintiff	... 364 ...	252
Procedure in case of death of sole, or sole surviving, plaintiff	... 365 ...	252
Abatement where no application by representative of deceased plaintiff	... 366 ...	252-53
Procedure in case of dispute as to representative of deceased plaintiff	... 367 ...	253
Procedure in case of death of one of several defendants, or of sole or sole surviving defendant	... 368 ...	253-54
Suit not abated by marriage of female party	... 369 ...	254
When plaintiff's bankruptcy or insolvency bars suit	} 370 ...	255
Procedure when assignee fails to continue suit or give security		
Procedure in case of assignment pending suit	... 372 ...	255

## CHAPTER XXII.

## OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS—

Power to allow plaintiff to withdraw with liberty to bring fresh suit	... 373 ...	255-56
Limitation-law not affected by first suit	... 374 ...	256
Compromise of suits	... 375 ...	256

## CHAPTER XXIII.

## OF PAYMENT INTO COURT—

Deposit by defendant of amount in satisfaction of claim	... 376 ...	256
Notice of deposit	... 377 ...	257
Interest on deposit not allowed to plaintiff after notice	... 378 ...	257
Procedure where plaintiff accepts deposit as satisfaction in part	} 379 ...	257-58
Procedure where he accepts it as satisfaction in full		



# CONTENTS.

xxiii

## CHAPTER XXIV.

OF REQUIRING SECURITY FOR COSTS—	Section.	Page.
When security for costs may be required from		
plaintiff at any stage of suit ... ..	380 ...	258
Effect of failure to furnish security ... ..	381 ...	258
Residence out of British India ... ..	382 ...	258

## CHAPTER XXV.

### OF COMMISSIONS—

#### A.—*Commissions to examine Witnesses—*

Cases in which Court may issue commission to		
examine witness ... ..	383 ...	259
Order for commission ... ..	384 ...	259
When witness resides within Court's jurisdiction ...	385 ...	259
Persons for whose examination commission may issue	386 ...	259-60
Commission to examine witness not within British		
India ... ..	387 ...	260
Court to examine witness pursuant to commission...	388 ...	260
Return of commission with depositions of witnesses	389 ...	260
When depositions may be read in evidence ...	390 ...	260-61
Provisions as to execution and return of commissions		
to apply to commissions issued by foreign Courts	391 ...	261

#### B.—*Commissions for local Investigations—*

Commission to make local investigations ... ..	392 ...	261-62
Procedure of commissioner ... ..		
Report and depositions to be evidence in suit ...	393 ...	262
Commissioner may be examined in person ...		

#### C.—*Commissions to examine Accounts—*

Commission to examine or adjust accounts ...	394 ...	262
Court to give commissioner necessary instructions		
Court to receive commissioner's proceedings or direct	395 ...	262-63
further enquiry ... ..		

#### E.—*General Provisions—*

Expenses of commission to be paid into Court ...	397 ...	263
Powers of commissioners ... ..	398 ...	263
Attendance, examination and punishment of wit-		
nesses before commissioner ... ..	399 ...	263-64
Court to direct parties to appear before commissioner		
Procedure <i>ex parte</i> ... ..	400 ...	264

## PART III.—OF SUITS IN PARTICULAR CASES.

## CHAPTER XXVII.

### SUITS BY ■ AGAINST GOVERNMENT ■ PUBLIC OFFICERS—

Suits by ■ against Secretary of State in Council ...	416 ...	264
Persons authorized to act for Government ...	417 ...	264

## SUITS BY ■■ AGAINST GOVERNMENT ■■ PUBLIC OFFICERS—

	Section.	Page.
Plaints in suits by Secretary of State in Council ...	418 ...	264-65
Agent of Government to receive process ...	419 ...	265
Appearance and answer by Secretary of State in Council ...	— ...	265
Attendance of person able to answer questions relating to suit against Government ...	— 421 ...	265
Service on public officers ...	422 ...	265
Extension of time to enable officer to make reference to Government ...	423 ...	265-66
Notice previous to suing Secretary of State in Council or public officer ...	424 ...	266
Arrests in such suits ...	425 ...	266
Application where Government undertakes defence	426 ...	266
Procedure where no such application made. Defendant not liable to arrest before judgment ...	427 ...	266
Exemption of public officers from personal appearance ...	428 ...	267
Procedure where decree against Government or public officer ...	429 ...	267

## CHAPTER XXVIII.

## SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS—

When aliens may sue ...	430 ...	267-68
When foreign State may sue ...	431 ...	268
Persons specially appointed by Government to prosecute or defend for Princes or Chiefs ...	432 ...	268
Execution in British India of decree of Courts of Native States ...	434 ...	268-69

## CHAPTER XXIX.

## SUITS BY AND AGAINST CORPORATIONS AND COMPANIES—

Subscription and verification of plaint ...	435 ...	269
Service on Corporation or Company ...	436 ...	269

## CHAPTER XXX.

## SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS—

Representation of beneficiaries in suits concerning property vested in trustees, &c. ...	437 ...	270
Joinder of executors and administrators ...	438 ...	270
Husband of married executrix not to join ...	439 ...	270

CHAPTER XXXI.

SUITS BY AND AGAINST MINORS AND PERSONS OF

UN SOUND MIND—

	Section.	Page.
Minor must sue by next friend. Costs ...	440	270
Applications to be made by next friend or guardian		
<i>ad litem</i> ...	441	271
Plaint filed without next friend to be <i>rejected</i> ...	442	271
Costs ...		
Guardian <i>ad litem</i> to be appointed by Court ...	443	271
Order obtained without next friend or guardian		
may be discharged ...	444	271
Costs ...		
Who may be next friend ...	445	271-72
Removal of next friend ...	446	272
Retirement of next friend ...	447	272
Application for appointment of new next friend...		
Stay of proceedings on death or removal of next friend ...	448	272
Application for appointment of new next friend ...	449	272
Course to be followed by minor plaintiff or applicant on coming of age ...	450	272-73
Where he elects to proceed ...	451	273
Where he elects to abandon ...	452	273
Costs ...		
Making and proving applications under sections 451, 452 ...	453	273
When minor co-plaintiff coming of age desires to repudiate suit ...	454	273-74
Costs ...		
When suit unreasonable or improper ...	455	274
Costs ...		
Petition for appointment of guardian <i>ad litem</i> ...	456	274
Who may be guardian <i>ad litem</i> ...	457	274
Guardian neglecting his duty may be removed ...	458	274-75
Costs ...		
Appointment in place of guardian dying <i>pendente lite</i> ...	459	275
Guardian <i>ad litem</i> of minor representative of deceased judgment-debtor ...	460	275
Before decree, next friend or guardian <i>ad litem</i> not to receive money without leave of Court and giving security ...	461	275
Next friend or guardian <i>ad litem</i> not to compromise without leave of Court ...	462	275
Compromise without leave voidable ...		
Application of sections 440 to 462 to persons of unsound mind ...	463	275
Wards of Court ...	464	276

## CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN—	Section.	Page.
Officers or soldiers who cannot obtain leave may authorize any person to sue ■ defend for them...	465	... 276-77
Person so authorized, may act personally or appoint pleader ... ..	466	... 277
Service on person so authorized, ■ ■ his pleader, to be good service ... ..	467	... 277
Service on officers and soldiers ... ..	468	... 277
Execution of warrant of arrest ■ cantonments, &c.	469	... 277-78

## CHAPTER XXXIII.

## INTERPLEADER—

When interpleader-suit may be instituted ...	470	... 278
Plaint in such suit ... ..	471	... 278-79
Payment of thing claimed into Court ... ..	472	... 279
Procedure at first hearing ... ..	473	... 279
When agents and tenants may institute interpleader-suits ... ..	474	... 279-80
Charge of plaintiff's costs ... ..	475	... 280
Procedure where defendant ■ suing stake-holder ...	476	... 280
Costs ... ..		

## PART IV.—PROVISIONAL REMEDIES.

## CHAPTER XXXIV.

## OF ARREST AND ATTACHMENT BEFORE JUDGMENT—

## A.—Arrest before Judgment—

When plaintiff may apply that security be taken ...	477	... 281-82
Order to bring up defendant to show cause why he should not give security ... ..	478	... ■
If defendant fail to show cause, Court may order him to make deposit or give security ... ..	479	— 282
Procedure in case of application by surety to be discharged ... ..	480	... 282-83
Procedure where defendant fails to give security or find fresh security ... ..	481	... 283
Subsistence of defendants arrested ... ..	482	... 283

## B.—Attachment before Judgment—

Application before judgment for security from defendant to satisfy decree, and in default for attachment of property — — ...	483	... 283-84
Contents of application ... — —		

# CONTENTS.

xxvii

<i>B.—Attachment before Judgment—</i>	Section.	Page.
Court may call on defendant to furnish security ■		
show cause ... ..	484	284-85
Attachment if cause not shown ■ security not fur- nished ... ..	485	285
Withdrawal of attachment ... ..		
Mode of making attachment ... ..	486	285
Investigation of claims to property attached before judgment ... ..	487	285
Removal of attachment when security furnished or suit diminished ... ..	488	285
Attachment not to affect rights of strangers, or bar decree-holder from applying for sale ... ..	489	285-86
Property attached under chapter not to be re-attached in execution of decree ... ..	490	286
<i>C.—Compensation for improper Arrests or Attachments—</i>		
Compensation for obtaining arrest or attachment on insufficient grounds ... ..	491	286
Proviso ... ..		

## CHAPTER XXXV.

### OF INTERLOCUTORY ORDERS—

Power to order interim sale of perishable articles ...	498	287
Power to make order for detention, &c., of subject- matter, and to authorize entry, taking of samples and experiments ... ..	499	287
Application for such orders to be after notice ...	500	287-88
Deposit of money, &c., in Court ... ..	502	288

## PART V.—OF SPECIAL PROCEEDINGS.

### CHAPTER XXXVII.

#### REFERENCE TO ARBITRATION—

Parties to suit may apply for order of reference —	506	288
Nomination of arbitrator ... ..		
When Court to nominate arbitrator ... ..	507	288-89
Order of reference ... ..	508	289
When reference ■ to two or more, order to provide for difference of opinion ... ..	509	289
Death, incapacity, &c., of arbitrators ■ umpire ...	510	289-90
Appointment of umpire by Court ... ..	511	290
Powers of arbitrator or umpire appointed under sec- tions 509, 510, 511 ... ..	512	290
Summoning witnesses ... ..		
Punishment for default, &c. ... ..	513	290



REFERENCE TO ARBITRATION—	Section.	Page.
Extension of time for making award . . . . .	514	291
Supersession of arbitration . . . . .	515	291
When umpire may arbitrate in lieu of arbitrators . . . . .	516	291
Award to be signed and filed . . . . .	517	291
Arbitrators or umpire may state special case . . . . .	518	291-92
Court may, on application, modify or correct award in certain cases . . . . .	519	292
Order as to costs of arbitration . . . . .	520	292
When award or matter referred to arbitration may be remitted . . . . .	521	292-93
Grounds for setting aside award . . . . .	522	293
Judgment to be according to award . . . . .	523	293-94
Decree to follow . . . . .	524	294
Agreement to refer to arbitration may be filed in Court . . . . .	525	294
Application to be numbered and registered . . . . .	526	295
Notice to show cause against filing . . . . .	527	296
Provisions of chapter applicable to proceedings under order of reference . . . . .	528	296
Filing award in matter referred to arbitration without intervention of Court . . . . .	529	296
Application to be numbered and registered . . . . .	530	296
Notice to parties to arbitration . . . . .	531	296-97
Filing and enforcement of such award . . . . .	532	297-98

## CHAPTER XXXVIII.

## OF PROCEEDINGS ON AGREEMENT OF PARTIES—

Power to state case for Court's opinion . . . . .	527	295
When value of subject-matter must be stated . . . . .	528	296
Agreement to be filed and numbered as suit . . . . .	529	296
Parties to be subject to Court's jurisdiction . . . . .	530	296
Hearing and disposal of case . . . . .	531	296-97

## CHAPTER XXXIX.

## OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS—

Institution of summary suits upon bills of ex- change, &c. . . . .	532	297-98
Payment into Court of sum mentioned in summons Defendant showing defence in merits to have leave to appear . . . . .	533	298
Power to set aside decree . . . . .	534	298
Power to order bill, &c., to be deposited with officer of Court . . . . .	535	298
Recovery of cost of noting non-acceptance of dis- honoured bill or note . . . . .	536	299
Procedure in suits under chapter . . . . .	537	299
Application of chapter . . . . .	538	299-300

# CONTENTS.

xxix

## PART VII.

### CHAPTER XLVI.

OF REFERENCE TO AND REVISION BY THE HIGH COURT.	Section.	Page.
Reference of question to High Court ... ..	617 ...	300
Court may pass decree contingent upon opinion of High Court ... ..	618 ...	300-1
Judgment of High Court to be transmitted, and disposed of accordingly ... ..	619 ...	301
Costs of reference to High Court ... ..	620 ...	301
Power to alter, &c., decrees of Court making re- ference ... ..	621 ...	301
Power to call for record of cases not appealable to High Court ... ..	622 ...	301

## PART X.

### CHAPTER XLIX.

#### MISCELLANEOUS—

Exemption of certain women from personal appear- ance ... ..	640 ...	302
Local Government may exempt certain persons from personal appearance ... ..	641 ...	302
List of names of persons exempted to be kept in Courts ... ..		
Costs of commission rendered necessary by claiming privilege ... ..		
Persons exempt from arrest under civil process ...	642 ...	303
Procedure in case of certain offences ... ..	643 ...	303-4
Language of subordinate Courts ... ..	645 —	304
Power of Registrars of Small Cause Courts to state cases ... ..	646 ...	304
Miscellaneous proceedings ... ..	647 ...	304
Admission of affidavits as evidence ... ..		
Procedure when person to be arrested or property to be attached is outside district ... ..	648 ...	305
Rules applicable to all civil process for arrest, sale or payment ... ..	649 ...	305-6
Application of rules to witnesses ... ..	650 ...	306
Service of foreign summonses ... ..	650A ...	306
Penalty for resisting apprehension or escaping from custody under Code or civil process ... ..	651 ...	306-7

## PART IV.

### RULES OF PRACTICE.

	Rule.	Page.
Interpretation clause ... ..	1 ...	308-9
The Judges ... ..	2 —	309
Registrar and other officers of the Court ... ..	3-8 ...	309-10
Pleadings ... ..	9-10 ...	310
The plaint and verification ... ..	11-13 ...	310-11
Summons, process and warrant ... ..	14-27 ...	311-13
Set-off ... — ... ..	28 ...	314
Witnesses ... ..	29-32 ...	311-15
Compromise and decree ... ..	33-37 ...	315-16
Applications generally ... ..	38-43 ...	316-17
Application for new trials or to set aside a dismissal or decree ... ..	44-48 ...	317-18
Claims and complaints ... ..	49-52 ...	319
Recovery of possession of immoveable property ... ..	53 ...	319-20
Procedure in appeals and claims under Act IV of 1876 of the Bengal Council ... ..	54 ...	320
Miscellaneous ... ..	55-57 ...	320-21

## PART V.

### APPENDIX.

<i>A.</i> —Rules for the officers of the Court and the transaction of business in the offices of the Court ... ..	822-26
<i>B.</i> —Proclamation fixing the Local Limits of Calcutta ....	327-29
<i>C.</i> —Forms of Causes of Action, Plaints and Concise Statements...	330-79
<i>D.</i> —Order of the High Court relative to the hearing of references	379-80
<i>E.</i> —Rules regarding stamps used to denote fees chargeable in the Court of Small Causes of Calcutta — ... ..	380-82
<i>F.</i> —Table of Fees ... ..	383-405
<i>G.</i> —Rules and Table of Fees for Legal Practitioners ... ..	405-7
<i>H.</i> —List of Holidays observed in the Court of Small Causes of Calcutta ... ..	407-8
<i>I.</i> —Scale of Fees for serving processes sent to other Courts under sec. 85 of the Code ... ..	409-10
<i>J.</i> —Scale of Subsistence-money for judgment-debtors ... ..	410-11
<i>K.</i> —Scale of Imprisonment for judgment-debtors ... ..	411

# CONTENTS.

xxxi

	Page.
<b>L.—FORMS—</b>	
No. 1. Plaint ... ..	412
■ 2. Summons to a defendant ... ..	413
■ 3. Application for second Summons to a defendant ...	414
„ 4. Application for Summons to ■ witness ... ..	414
■ 5. Summons to Witness to give evidence and produce documents ... ..	415
■ 6. General form of Application ... ..	415-16
„ 7. Application for Warrant in execution of decree ...	416
„ 8. Warrant of Attachment and Sale ... ..	416-17
„ 9. Warrant of Arrest ... ..	417-18
„ 10. Attachment before judgment with order to call for security for fulfilment of decree ... ..	418-19
■ 11. Attachment on proof of failure to furnish security ...	419-20
■ 12. Copy of decree and certificate for transmission to another Court ... ..	420-21
„ 13. Notice of payment into Court ... ..	421
„ 14. Commission to examine absent witnesses ... ..	422
„ 15. Order of reference to Arbitration ... ..	422-23
„ 16. Summons in summary suit on Negotiable Instrument	423-24
„ 17. Bond for staying Warrant of Possession ... ..	424
„ 18. Application for Distress Warrant ... ..	425
„ 19. Security-Bond on reference to the High Court ...	425-26
„ 20. Indemnity-Bond in Suit on lost negotiable instrument	426-27
„ 21. Bail-Bond by a witness ... ..	427-28
„ 22. Summons to ■ Witness to give evidence and produce documents before an arbitrator ... ..	428
„ 23. Summons to ■ Witness to appear and produce documents before an arbitrator ... ..	428-29
„ 24. Warrant for the arrest of ■ witness, for disobeying ■ summons to give evidence or produce ■ document...	429-30
■ 25. Warrant for refusing to give evidence ... ..	430
■ 26. Warrant of Possession under sec. 43 of the Act ...	431
„ 27. Notice to show cause why Award should not be filed under sec. 525 of the Code ... ..	432
<b>M.—Scale of feeding charges for live-stock attached in execution of decree ... ..</b>	<b>432</b>
<b>N.—Jurisdiction under Act IV of 1876, B. C. ... ..</b>	<b>432-33</b>
<b>O.—Bond and Warrant under sec. 29 of the Act and Rule 53 ...</b>	<b>434-35</b>





# TABLE OF CASES CITED.

	Page.
<i>Awards v. Rhodes</i> , 22 L. J., Exch., 106 ... ..	88
<i>Banks v. Rebbeck</i> , 20 L. J., Q. B., 476 ... ..	119
<i>Bath v. Clive</i> , 10 C. B., 827 ... ..	96
<i>Bhavanishankar Shevakram v. Pursádi Kálidás</i> , 6 I. L. R., Bom., 292 ... ..	154
<i>Boulding v. Tyler</i> , ■ L. J., Q. B., 85 ... ..	96
<i>Boyle v. Turner</i> , G. R., Vol. I, 17 ... ..	89
<i>Brown v. The L. &amp; N. W. Ry. Coy.</i> , 32 L. J., Q. B., 318 ..	90
<i>Cannan v. Wood</i> , 2 M. & W., 465 .. ...	89
<i>Chowdhry Wahid Ali v. Mullick Inayet Ali</i> , 6 B. L. R., 52 ...	87
<i>Chundee Churn Dutt v. Eduljee Cowasjee Bijnee</i> , ■ I. L. R., Calc., 688 ... ..	87, 95
<i>Craven v. Bracas</i> , G. R., Vol. I, ■ ... ..	87
<i>DeSouza v. Coles</i> , 3 Mad. H. C. R., 384 ... ..	84
<i>Elaston v. Rose</i> , 4 L. R., Q. B., 4 ... ..	120
<i>Emritloll v. Kidd</i> , 2 Hyde, 117 ... ..	86
<i>Ewart, Latham &amp; Co. v. Hadji Mahomed-Siddik</i> , 4 Bom. H. C. R., O. C. J., 133 ... ..	■
<i>Fakirapa v. Pándurangapa</i> , 6 I. L. R., Bom., 7 ... ..	106
<i>Fornaro v. Ramnarian Sookdeb</i> , 14 B. L. R., 182 ... ..	111, 140
<i>Gour Churn Soor v. Peary Lall Paul</i> , 15 B. L. R., Apx., 12 ...	200
<i>Government of Bombay v. Ramnall Singi, Amar Singi</i> , ■ Bom. H. C. R., 242 ... ..	95
<i>Hall v. Joakim</i> , 12 B. L. R., 34 ... ..	79, 112
<i>Harran Chunder Gangooly v. Shib Chunder Mitter</i> , ■ Hyde, 237	97
<i>Harrington (Earl of) v. Ramsay</i> , 2 E. ■ B., 669 ... ..	120
<i>Hásam Kásam v. Goma Jadávji</i> , ■ Bom. H. C. R., O. C. J., 140	89
<i>Hughes v. Buckland</i> , 15 M. ■ W., 346 ... ..	■
<i>Huper v. Stevens</i> , 4 Ad. ■ El., 71 — ... ..	89
<i>Hurymoney Dossee v. Gopal Chunder Mukerjee</i> , 2 T. & B., 57 — ... ..	93 119

	Page.
Jackson v. Spittal, 5 L. R., C. P., 542	84
Jones v. Owen, 5 D. & L., 669	87, 95, 119
Joule v. Tayler, 7 Exch., 58	96
Jussorut Khan v. Kanye Lall Dey, S. C. C. Ref., 1866	94, 154
Justices of the Peace for Calcutta v. The Oriental Gas Company, ■ B. L. R., 433	71
Kallypersaud Sing v. Hoolas Chand, 10 B. L. R., 448	103
Kuch v. Hall, 1 Smith's L. C., 523	119
Lalljee Lall v. Hardey Narian, 9 I. L. R., Calc., 105	84
Lawson v. Dumlin, 9 C. B., 54	96
Legge v. Tucker, 26 L. J., Exch., 71	97
Lootf Ali Meah v. Pearee Mohun Roy, 16 Suth. W. R. (Civ R.), 223	197
Mackintosh v. Gill, 12 B. L. R., 37	■
Meherervanji Mancharji v. Punja Velji, 5 Bom. H. C. R., O. C. J., 147	88
Mitchell v. Hender, 23 L. J., Q. B., 273	87
Moonsbi Golam Arab v. Curreembux Shaikjee, 5 I. L. R., Calc., 294	106
Motilal Ramdas v. Jamnadas Janardas, 2 Bom. H. C. R., 40	87
Muddunmohun Chatterjee v. Chunder Kanto Mookerjee, S. C. C. Case, D. 5, 68, 1882	104
Narayan Krishna Laud v. The Collector of Bombay, 5 Bom. H. C. R., O. C. J., 1	93
Newcomb v. De Roos, 29 L. J., Q. B., 4	85
Nocoordass Mullick v. Jewraj Baboo, 12 B. L. R., 263	121
Nowla Ooma v. Bala Dhuramji, 2 I. L. R., Bom., 94	93
Paor v. Lillicrop, 32 L. J., Exch., 105	96
Parbutty Bewah v. Woomatara Dabee, 14 B. L. R., 201	103
Pirbhai Khimji v. Bombay-Baroda and Central India Ry. Coy., ■ Bom. H. C. R., 59	77
Price v. Ramgopal Banerjee, T. P., 29	95
Queen v. The Judges of the Small Cause Court, 2 T. & B., 4	86
Radamoney Boistomey v. Anundomoye Dabee, G. R. Vol. I, 51	93
Ramkissen Rawutmull v. Ramdhone Chunduck, S. C. C. Ref., 8th September 1881	94

# TABLE OF CASES CITED.

XXXV

	Page.
Shaikh Jan Ali v. Khonkur Abdur Kukma, 6 B. L. R., 52	87
Shearman v. Roberts, G. R., Vol. I, 75	94
Shiel v. Great Northern Ry. Coy., 30 L. J., Q. B., 331	90
Sikurchand v. Sooringmull, 1 Hyde, 272	97
S. N. Sing v. G. P. N. Sing, 7 Sath. W. R., 269	28
Smith v. Sims, G. R., Vol. I, 145	89
Suboraya Mudali v. The Government of Madras and Cunliffe, 1 Mad. H. C. R., 286	87, 90
Tinkler v. Hilder, 4 Exch., 187	95
Vaughan v. Welden, 10 L. R., C. P., 47	84
Walji Karinaji v. Jagonath Premji, 2 I. L. R., Bom., 84	93
White v. Morris, 11 C. B., 1015	96
Williamson v. Allison, 2 East., 452	97
Williamson Brothers v. Arab Ismail Khan, 11 B. L. R., 415	139
Woodhams v. Newman, 7 C. B., 654	



THE PRACTICE  
OF THE  
PRESIDENCY COURT OF SMALL CAUSES  
OF  
CALCUTTA,  
UNDER  
ACT XV OF 1882.

---

*In the marginal references, A. stands for Act, C. for Code, R. for Rule, Apx. for Appendix.*

---

PART I.  
*Proceedings in Ordinary Cases.*

---

The Plaintiff.

Act 17—20, 32. Code 43—61. Rules 11, 12, 13, 38, 39, 42, and 43.  
Apx. B. C. L.

A suit is instituted in the Small Cause Court by filing a plaint in the summons office of the Court on ■ form prescribed by the Court. Forms are obtainable, on application, at the office of the Clerk of the Court.

Suits to be commenced by plaint.

The plaint must be written in English and contain the following particulars :—

Particulars to be contained in plaint.  
C. 50.

1. The name, description, and place of residence of the plaintiff.





2. The name, description, and place of residence of the defendant, so far as they can be ascertained.

3. A plain and concise statement of the circumstances constituting the cause of action, and where and when it arose.

4. A demand of the relief which the plaintiff claims.

5. If the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

6. In suits for money, the precise amount claimed, so far as the case admits.

Where  
plaintiff   
 representa-  
tive.

When the plaintiff sues in a representative character, the plaint should show that he has taken the steps necessary to enable him to sue in that character,—*i. e.*, that he has proved the will ; or taken out letters of administration ; or is the natural or specially appointed guardian of a minor plaintiff.

Defendant's  
interest and  
liability to be  
shown.

When the defendant is sued in a representative character, the plaint must show that he is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand : as where he is the heir, executor or administrator, or has possessed himself of the property of a deceased person by whom the debt was due to the plaintiff. See also illustration to s. 50 of the Code.

Grounds of  
exemption  
from limita-  
tion law.

If the cause of action arose beyond the period of limitation ordinarily allowed for bringing the suit, the ground of exemption from the law must be stated. If an omission of the kind has been made, the plaint cannot be amended. It must be rejected. See s. 54 of the Code.

A minor may sue for any sum not exceeding 500 rupees, which may be due to him under s. 70 of the Indian Contract Act for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

When minor may sue without next friend. A. 32.

The suit should include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. See *Mackintosh v. Gill (a)*. But a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the Court, provided the subject-matter of the claim is such as the Court may try.

Suit to include the whole claim. C. 43.

If a plaintiff omit, or intentionally relinquish, a portion of his claim, he cannot afterwards sue in respect of the portion so omitted or relinquished.

Omission, &c. of part of claim.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

Omission to sue for one of several remedies.

For the purpose just stated, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

A claim by or against an executor, administrator or heir as such, cannot be joined with claims by or against him personally, unless the personal claims arise with reference to the estate, or are such as he was entitled to or liable for jointly with the deceased person whom he represents.

Claim by or against executor, administrator or heir. C. 44, rule b.

(a) 12 B. L. R., 37.

Plaintiff may join several causes of action. C. 45.

Subject to the provisions of s. 45 of the Code of Civil Procedure (as extended to the Small Cause Court), a plaintiff may join several causes of action.

Court may order separation.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, it may, at any time during the progress of the suit, order a separation of any such causes of action, and confine the pending suit to such one or more causes of action as may be conveniently tried.

Total claim not to exceed pecuniary limit.

When causes of action are united, the total claim must not exceed the pecuniary limit of the Court's jurisdiction, but the plaintiff may relinquish a portion of his claim.

Defendant may apply to confine suit.

A defendant alleging that the plaintiff has united several causes of action, which cannot be conveniently disposed of in one suit, may, at any time, apply for an order confining the suit to such of the causes of action as may be conveniently tried in one suit.

Exclusion and amendment.

The Court, on hearing the application, may, if it sees fit, exclude some causes of action, and order the necessary amendment.

Plaint to be signed and verified. C. 51.

The plaint must be signed by the plaintiff and his pleader, if any, and must be verified by the plaintiff or by some one acquainted with the facts of the case. But if a plaintiff is, by reason of absence or other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf. The authority must be in writing.

Contents of verification. C. 52, R. 12.

The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true.

The verification must be signed by the person making it. See also Rule 12.

A partner may sign and verify a plaint for his co-partners. A plaint is evidence against the plaintiff of the facts stated in it, and is an admission within the meaning of s. 21 of the Evidence Act. See Broughton's Code of Civil Procedure and cases cited (a).

Partner may sign and verify.  
Effect of verification.

Section 18 of the Act sets forth the suits in which the Small Cause Court has jurisdiction ; and s. 19, the suits in which it has no jurisdiction.

Suits in which Court has, and has no, jurisdiction.

Section 17 lays down the local limits of the Court's jurisdiction. See Appendix B.

A. 18, 19.  
Local limits.  
A. 17.  
Apx. B.

Under s. 20 of the Act, the Court may, by consent of parties, try suits beyond the pecuniary limits, provided the subject-matter falls within the Court's jurisdiction.

When Court may try suits beyond pecuniary limits. A. 20.

The leave of the Court to the institution of a suit must be obtained after the plaint is written out, but before it is filed, in the following cases :—

Leave to institute a suit when necessary. A. 18.

(1) When the defendant or (where there is more than one defendant) any defendant resides beyond the local limits and does not carry on business or personally work for gain within such limits, and has not acquiesced in the suit.

(2) When the defendant is *temporarily* residing within the local limits, and part of the cause of action has arisen outside such limits.

(3) Where the defendant is a corporation or company with a subordinate office within the local

(a) Broughton, 159—61. Evidence Act, I of 1872, s. 21 *et seq.*



limits, but the cause of action has arisen in part beyond such limits. See note to s. 18 of the Act.

Contents of  
application,  
&c.  
R. 38, 39, 42-3.  
Apx. L. 6.

The application may be on the general form of application (Appendix L. 6), and must be signed and verified. It is generally made to the Chief Judge. See Rules 38, 39, 42 and 43.

Forms of  
"causes of  
action," &c.  
Apx. C.

For forms of "causes of action" and "concise statements" see Appendix C.

Plaint Form.  
Apx. L. 1.  
R. 13.

For form of Plaint see Appendix L. 1.

## The Fees and Payment of Money.

Act 71, 72, 74. Rule 5. Apx. E. F.

Institution  
and summons  
fees. A. 71,  
72, Apx. F.

The plaint having been made out, and (when necessary) leave obtained to institute the suit, the next step is to pay the institution and summons fees.

For Table of Fees see Appendix F.

Fees collect-  
ed by adhesive  
stamps.  
Apx. E.

All fees are collected by means of adhesive stamps. The Stamp Office is attached to the Treasury of the Court, where alone fees may be paid and stamps obtained. The party takes his plaint to this office, where it is examined by the officer in charge, and the proper fees denoted. Stamps representing the fees chargeable are affixed to the plaint, which is then returned to the party. He should see that the stamps on the plaint correspond exactly to the sum which he has paid. He should also see that the stamps are clean and free from marks or signs of previous use, and he must not deface or mark the stamps in any way.

Fees and  
costs of poor  
persons.  
A. 74.

The Court may, whenever it thinks fit, allow plaints to be filed by *poor* persons, and issue summonses and



processes on behalf of such persons without payment, or on ■ part payment, of fees. The application is ordinarily made to the Chief Judge.

A receipt or memorandum is granted by the proper officer of the Court for every sum paid into Court as fees or costs or on any account whatsoever, and no money is paid out of Court relating to the same matter without the production of the receipt or memorandum so granted unless by order of the Court or Registrar. Parties should, therefore, be careful to retain their receipts, and not to make them over to persons not duly authorized to draw money or to act for them. See also Appendix A. Rules 30, 31, 32 and 34.

Receipt to be obtained in every ■ ■ payment of fees, &c. R. 5. Apx. A. R. 30-34.

If one party to a suit, out of two or more parties, desires to draw money from the Court, he must make a special application to the Registrar, when the circumstances entitling him to do so are enquired into, and such order made as may appear necessary to guard the interests of the absent parties.

One of several parties entitled applying for payment.

## **The Issue and Service of the Summons.**

Code 64, 69—77, 82—95, 422, 468. Rules 13, 15—21, 23.  
Apx. A. 1.

From the Stamp Office the plaint is taken to the Summons Office, where it is received and examined by the *Nazir*, or Superintendent of the Department. His duty is to see that the plaint is in due form and sufficiently stamped, and to grant a receipt for the same. He has no power to reject or amend a plaint, but must accept it ■ of course, if it is properly stamped, and appears, in other respects, on the face of

Filing of the plaint.

it, to be regular and in order. Having passed the plaint, he enters on it the number of the Bench before which the suit will be heard, the returnable date of the summons, and the name of the serving-officer to whom the summons will fall for service. These particulars are then entered on the receipt, which is handed to the suitor.

Issue of  
summons.  
O 64. R. 13.

When the plaint has been filed, a summons issues to each defendant. The body of the summons, or where there are more defendants than one, a separate piece of paper attached to the summons, contains the "cause of action" as set out in the plaint, or a concise statement of the same, and the day of hearing is specified in the summons.

For final  
disposal of  
suit, &c.  
R. 14.  
Apz. A. 5.

All summonses are for the final disposal of the suit. They are dated as of the day on which the plaint is filed, and are signed by the Clerk of the Court and sealed with the seal of the Court.

Returnable  
date of sum-  
mons. R. 15.

A summons in a suit not exceeding 500 rupees is ordinarily returnable on the *seventh* day, and in a suit exceeding 500 rupees, on the *fourteenth* day; but in either case a summons may be made returnable in a shorter or longer period at the discretion of the Court.

Time for  
serving.  
R. 16.

In the first case, the summons must be served at least *three* clear days, and in the second case, at least *six* clear days, before the returnable date.

Meaning of  
"clear days."

"Clear days" means *whole* days, but if any of the days happens to be a holiday, and the defendant has in consequence been unable to obtain summonses for his witnesses, or to take any other steps which may be necessary for his defence, he will be entitled to an adjournment, and the plaintiff will not ordinarily be entitled to any costs. But the defence must be a

*bonâ fide* defence, and not ■ mere application for time on the ground of short service : for the service itself will be good service.

When the Court fixes a longer or shorter period for the return of the summons, it also fixes the period to be allowed a defendant between the time of service and the returnable date of the summons.

Time allowed in other cases.

A summons to a defendant, resident or carrying on business out of the local jurisdiction, is made returnable on a date fixed by the Court, and must be served so many clear days before such date as the Court orders.

Summons to defendant out of the jurisdiction. R. 17.

The summons orders the defendant to produce all documents upon which he intends to rely in support of his defence ; and to produce his witnesses at the hearing.

Summons directs production of documents and witnesses relating to defence. C. 70-71.

If the defendant has in his possession or power any documents upon which the plaintiff relies to prove his case, he should issue and serve the defendant with a separate summons for their production, specifying particularly the documents required.

Subpoena for exhibits.

The plaintiff should apply at the Head Bailiff's Office to have his summons served the day after the plaint has been filed between half-past ten and one o'clock.

Application for service. Apx. A. 8.

The plaintiff, or some one on his behalf, must always accompany the serving-officer to serve the summons, and the person so applying should always bring with him the Court-receipt granted for the plaint. The receipt contains this notice in English and Bengali :—“No money will be paid out of Court,

Plaintiff or his man to accompany serving-officer. R. 19. Court-receipt to be produced.

except on production of this certificate, or by order of ■ Judge or the Registrar. Bring this certificate when you come to the Court, or the Office of the Clerk, for *any* purpose connected with this case."

Summons  
how served.  
C. 74, 75, 76,  
77, R. 18.

The summons must be served in one or other of the ways provided in ss. 74, 75, 76 or 77 of the Code. When a summons cannot be served in any of these modes, it may be served as provided in Rule 18.

Substituted  
service.  
C. 82.

When service cannot be effected as prescribed by the Code, or the rule of practice, substituted service may be ordered. But before ordering substituted service, the Court is to examine the serving-officer and the person who accompanied him for the purpose of effecting service; and, if satisfied that the defendant cannot be served in the ordinary way, may order the summons to be posted in some conspicuous place in the Court-house, or at the residence or place of business of the defendant, or in such other manner as the Court thinks fit.

Examina-  
tion of party  
and officer.  
Order and  
time for  
appearance to  
be stated on  
record.  
C. 84.

The examination of the party entrusted with the service of the summons and of the serving-officer should appear, and the order for substituted service should be made, on the record of the suit before the substituted service is allowed, and in making the order the Court should fix the time for the appearance of the defendant.

Effect of  
substituted  
service. C. 83.

Substituted service is as effectual for all purposes ■ personal service.

Service on  
board ship,  
vessel, or  
boat. R. 20.

When a summons is to be served on any person who is living or serving on board any ship, vessel, or boat, and the same cannot be personally served, it may be served by delivering it to the senior officer



■ board, or to the person who, for the time being, may have charge of the ship, vessel, or boat.

When ■ summons is to be served under s. 422 of the Code on ■ Pilot, or Preventive Officer engaged in actual service, it may be sent to the head of the office in which such Pilot or Preventive Officer is employed, for the purpose of being served on him.

Service ■  
Pilot or Customs officer.  
R. 21.

When ■ summons has been served by an officer of the Court, the particulars of the service must be entered by the officer in a book kept for the purpose ; and the book must, in every case, be produced at the hearing, if the defendant does not appear and service has to be proved.

Service  
book. R. 7.

When the defendant resides beyond the local limits of the jurisdiction of the Court, and has no agent within the jurisdiction empowered to accept service, the summons is sent for service to the Court having jurisdiction at the place where the defendant resides, under s. 85 of the Code. For the fees payable in such a case, see Appendix I.

Service on  
defendant residing out of  
jurisdiction.  
C. 85. Fees.  
Apx. I.

Service on a defendant in jail is provided for in ss. 87 and 88 of the Code.

Service on  
defendant in  
jail. C. 87, 88.

The summons must be made out in duplicate. See Appendix A. 6.

Summons to  
be in duplicate.

A defendant residing out of British India, who has no agent in British India empowered to accept service, may be served by sending the summons to him by post at the place where he is residing, if there be postal communication to such place. This obviates the difficulty which previously existed in serving summonses in Chandernagore and other French Settlements. The letter must be registered.

Apx. A. 6.  
Service on  
defendant  
residing out  
of British  
India. C. 89.  
R. 23.



Service through British Resident, &c.  
C. 90.

Section 90 of the Code provides for service in places where there is a British Resident or Agent of Government.

Summons to be in duplicate.

The summons should be sent in duplicate, as one copy has to be returned with an endorsement under the hand of the Resident or Agent.

Service on officers and soldiers.  
C. 468.

Section 468 of the Code provides for the service of summons on an officer or soldier. If the officer or soldier is residing in Fort William, the summons is served through the Brigade-Major, by leaving it at his office for transmission to the defendant.

Summons to be in duplicate.

The summons in these cases should also be in duplicate, as one copy must be returned with the written acknowledgment of the defendant endorsed on it.

Substitution of letter for summons.  
C. 91, 92.

A letter may, in certain cases, be substituted for a summons under ss. 91 and 92 of the Code.

### **The Summoning and Attendance of Witnesses.**

Code 159—167, 171—174, 176—178, 192. Rules 29—32. Apx. A. L.

Summons to give evidence or produce documents.  
C. 159.  
Apx. L. 4.

The parties may obtain summonses for their witnesses to give evidence or produce documents at any time after the filing of the plaint. The application is made on a form provided by the Court: Appendix L. 4.

Contents of application.  
Fee. A. fourth sched., col. 3.

The applicant, after filling in the title of the case and other particulars, which he will find in his Court-receipt, if he is a plaintiff, and in his summons, if he is a defendant, has only to enter the names of his witnesses, and a description of the documents (if any) which he wishes to be produced at the

trial. Having filled up the form, it is taken, as in the case of a plaint, to the Stamp Office, where the fee is paid and the application stamped. For the scale of fees, see column 3 of the fourth schedule to the Act. The stamped application is then taken to the Subpœna Office, where it is filed and a receipt granted for it. The next day the party should attend, or send some one on his behalf to accompany the serving-officer to serve the summonses. The subpœna-receipt should be produced.

Each witness is entitled to his expenses, except when he is an agent or servant of the party requiring his attendance.

Expenses of witnesses.  
C. 160 R. 29.

Officers of the Court required to give evidence or produce documents in connection with matters arising in the course of their duties are not entitled to be paid any expenses.

Officers of Court not entitled to expenses.

When a payment has been made to a witness for his travelling and other expenses, and for one day's attendance in Court under s. 100 of the Code, and the suit has been adjourned, the witness will only be entitled to such additional sum as will defray the actual expenses to which he has been put in attending the Court at the adjourned hearing.

Expenses for adjourned hearings.

The sum, according to the scale annexed to the rules, should be tendered to the person summoned at the time of serving the summons, if it can be served personally.

Tender at time of service. R. 31.

A witness is entitled to be paid his expenses before giving his evidence, and if he has not been paid at the time of the service of the summons, he should apply for his expenses before giving his evidence: for, although there is nothing in the rule to prevent the

Payment should be demanded before giving evidence.  
R. 30.

Court ordering expenses at a later period, the witness may have some trouble in recovering the money if the party is unable or unwilling to pay.

Witness not to disobey summons for non-payment of expenses. R. 31.

A witness should not refuse to obey the summons, on the ground that his expenses have not been paid. His duty is to attend in obedience to the summons and represent to the Court that his expenses have not been paid, or that an insufficient payment or tender has been made. The Court will then decide what sum should be paid before the witness is examined.

Non-payment or non-tender ■ sufficient ground for refusal to arrest a witness. C. 174.

Although non-payment or non-tender of expenses is no excuse for a witness absenting himself, yet, if the party has failed to pay or tender the expenses to a witness, and the witness has not attended, it is a good ground for refusing to compel his attendance by arrest under s. 174 of the Code.

Summons to produce document only. C. 164.

A person may be summoned to produce ■ document merely, and he shall be deemed to have complied with the summons if he cause the document to be produced.

Court may call on any person present to give evidence, &c. C. 165.

Any person present in Court may be required by the Court to give evidence, or produce a document then and there in his actual possession.

Summons how served. C. 166.

Every summons to a witness may be served as nearly as may be in the same manner as a summons to a defendant.

Time for serving. C. 167.

The service must be made a sufficient time before the day of trial to allow the witness a reasonable time for preparation and attendance at Court.

Court may ■ witnesses not named, &c. C. 171.

The Court may, of its own accord, at any time it thinks necessary, summon any person to give evidence, or produce a document, although not named by the parties as a witness.

Summonses to witnesses are good, not only for the day mentioned in the summons, but for any day to which the suit may be adjourned; and no person, summoned and attending, shall cease to attend, until he has been examined, or has produced the document required, or has obtained leave to depart.

When witnesses may cease to attend. C. 173.

If a witness fails to comply with the summons, or ceases to attend without leave, he may be ordered to be arrested and brought before the Court; and if he fails to satisfy the Court that he had a lawful excuse for not complying with the summons or ceasing to attend, he may be sentenced to pay a fine not exceeding 500 rupees.

Consequences of failure to comply with summons. C. 174.

If the suit cannot be proceeded with when the witness is arrested, he may be required to give bail or other security for his appearance at a time to be appointed by the Court. For the form of Bail Bond see Appendix L. 21.

Bail Bond. Apx. L. 21.

A witness shall not be bound to attend in person, unless he resides within the local limits, or at a place less than fifty or (where there is railway communication for five-sixths of the distance) two hundred miles from the Court.

Persons not required to attend in person. C. 176.

If a party to a suit present in Court refuses, without lawful excuse, to give evidence when required, or to produce any document then and there in his possession or power, the Court may direct a decree to be passed against him, or make such order as it thinks fit. See also s. 83 of the Act.

Consequence of refusal of party to give evidence. C. 177.

The rules in the Code as to witnesses required to give evidence and produce documents apply to the parties to the suit.

Rules as to witnesses to apply to parties. C. 178.



When witness may be examined immediately.  
C. 192.

If a witness is about to leave the jurisdiction of the Court, or for other sufficient cause, his evidence may be taken immediately upon the application of either party, or of the witness himself. But, in such case, notice must be given to the parties of the time when the examination is to be taken. The evidence, when taken, is to be read over to, and signed by, the witness, and it may then be used at the trial.

Copy of evidence may be taken.  
Apx. A, 11.

When a witness has been so examined, either party to the suit, or his pleader, may obtain a copy of the evidence.

## The Appearance of Parties.

Code 26—38, 96. Rules 9-10.

Parties how to appear.  
C. 96.

Parties to a suit must appear in person, or by a recognized agent, or by a pleader duly appointed.

Recognized Agents.  
C. 37.

Recognized agents are—(1) persons holding general powers-of-attorney from parties *not* resident within the local limits, authorizing them to make and do such appearances, applications, and acts as may be necessary; (2) persons carrying on trade or business for and in the names of *non*-resident parties, within the local limits, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications, and acts.

What parties may appear by recognized agents.

It will be observed that, in both these cases, it is only *non*-resident parties who can appear by recognized agents. A party resident within the local limits cannot appear in this way. An English or Native landowner, merchant, or trader, living beyond the local limits, may appear by his recognized



agent, or the manager, or gomastah of his business. But ~~an~~ assistant clerk, or servant, cannot appear. If any member of a firm is resident in Calcutta, he must appear in person, or by a pleader specially appointed in the case.

All *resident* persons are required to appear in person, or by pleader. Native ladies, who, by the custom of the country, do not appear in public, and persons exempted from personal appearance in Court, and all other persons who do not desire, and are not required to appear personally, must, if residing within the local limits, appear, apply, and act by a pleader duly appointed. The appointment must be in writing, and on a one-rupee stamp.

Resident parties how to appear. C. 36.

An Advocate of the High Court is not required to produce any written authority to appear for a party.

Advocate not required to file written authority.

An Attorney or Pleader, accompanied by a party, or the recognized agent of a party, may appear in Court without his being constituted in writing.

Nor Attorney or Pleader with party. R. 9.

Processes served on the recognized agents, or Pleaders duly appointed in writing, of parties, shall be presumed to be duly communicated and made known to the party, and shall be as effectual as if the same had been served on the party personally.

Service of process on recognized agents and Pleaders. C. 38. R. 10.

Plaintiffs may be substituted or added for or to ■ plaintiff originally suing.

Substitution or addition of plaintiffs. C. 27.

Persons not originally made defendants may be joined as defendants.

Joinder of defendants. C. 32.

A plaintiff may join, at his option, all or any of the persons severally or jointly and severally liable on the same contract.

Joinder of parties liable on same contract. C. 29.

When one party may        and defend for others.  
C. 30.

Where there are several parties, one party may, with the leave of the Court, sue or defend on behalf of all others in the same interest.

Suit not to fail for mis-joinder or non-joinder.  
C. 31.

A suit is not to fail by reason of mis-joinder or non-joinder of parties.

Court may dismiss or add parties.  
C. 32.

The Court may also dismiss or add parties. But no plaintiff, or the next friend of a plaintiff, is to be added without his consent. Parties may apply to be made plaintiffs, or defendants, in certain suits in which they are interested.

All defendants added by a plaintiff must be served with a summons.

The Court may give the conduct of a suit to any plaintiff it deems proper.

Objections for want of parties when to be taken.  
C. 34.

All objections for want of parties or for non-joinder of parties must be taken at the earliest possible opportunity.

## The Compromise of Suits.

Act 73. Code 375. Rule 33.

Return of half-costs on compromise.  
A. 73.

If a suit is settled by agreement of the parties before the hearing, *half* the amount of *all* fees paid up to that time by the parties is returned to them.

What is the 'Hearing.'

"Hearing" means the actual hearing of the suit, whether it be on the return day of the summons, or on any day to which the hearing has been adjourned, provided it has not been entered upon.

Compromise how reported.  
R. 33.

The compromise should be reported by the plaintiff, or his recognized agent or duly appointed pleader, in open Court, to the Clerk of the Bench before which

the suit is pending, or to the Judge. The terms of the compromise should, if possible, be stated, so that they may be recorded on the plaint.

The defendant, or some one on his behalf, should also attend to see that the terms are correctly stated and recorded. Attendance of defendant.

See also s. 375 of the Code.

C. 375.

## The Withdrawal of Suits.

Code 373-4.

A plaintiff may withdraw a suit with leave of the Court. But he must satisfy the Court before permission can be granted—(1) that the suit must fail by reason of some formal defect; or (2) that there are sufficient grounds for permitting him to withdraw with liberty to bring a fresh suit. The Court, in granting permission, may put the plaintiff on such terms as to the costs of the defendant as it thinks fit. If a plaintiff withdraw without such permission, he will not only be liable for the defendant's costs, but he will be precluded from bringing a fresh suit for the same matter. When a suit may be withdrawn. C. 373.

One of several plaintiffs shall not be entitled to withdraw a suit without the consent of the others. When ■■■ of several plaintiffs entitled to withdraw.

When permission to withdraw has been granted, a fresh suit may be instituted, subject to the law of limitation, in the same manner as if the first suit had not been brought. Limitation not affected by first suit. C. 374.

## The Transfer of Suits.

Act 10, 14, 34.

When cases may be transferred from one Bench to another. A. 10.

Cases may, with the leave of the Court, be transferred from one Bench to another, when a cross-suit is pending between the same parties, or a suit between one of the parties and another party, where practically the same question has to be tried. This brings all the parties into one Court, and saves two hearings.

Transfer of cases to and from the file of the Registrar. A. 14, 34.

Any Judge of the Court may transfer to or from his own file any suit to, or on the file of, the Registrar, which the Registrar is empowered to try.

## The Hearing.

### *I.—Miscellaneous ex-parte and non-contested matters.*

Act 30 Code 20, 96--109, 138, 152--53, 376--79, 506--26.

Rules 38--42, 44--5, 47. Apx. F. L.

Attendance at the trial. C. 96.

On the day fixed in the summons for the hearing (and on every day to which a case is adjourned), the parties to the suit must be in attendance in person, or by their recognized agents or pleaders.

Witnesses and documents to be in readiness. C. 138.

The witnesses must be in attendance, and the documents (if any) on which the parties intend to rely, in readiness to be produced when called for by the Court.

Sitting of the Courts and order of business.

The Courts sit precisely at eleven o'clock, and all summonses and notices are returnable at that hour. A printed list of cases before each Bench is issued every day. The cases are called on in the order of this list, commencing with the summons cases, and ending with the postponed cases. Contested cases are next taken in their order, beginning with those on



the postponed list, unless for any special reason, as where any of the parties or their witnesses are leaving the jurisdiction.

Miscellaneous applications, compromises, *ex-parte* and non-contested cases are first disposed of in their order on the printed board ; and sometimes short contested cases.

Disposal of business.

If, on the day of hearing, neither plaintiff nor defendant appears, the suit is dismissed, unless the Court otherwise directs.

If neither party appears suit dismissed.  
C. 98.

If the plaintiff appears, and has failed to serve his summons, the Court may grant him a second summons.

Second summons.  
C. 100 (b).

If the plaintiff has failed to pay the fee for and serve the second summons, the Court may order the suit to be dismissed ; but if the defendant has appeared, the suit shall not be dismissed. The first summons may be handed to him in Court, and another day fixed for the hearing.

Dismissal of suit on non-payment of fee and failure to serve second summons. C. 97.

If a plaintiff has had successive summonses, and fails to serve them and to satisfy the Court that there were good grounds for such failure, the Court may refuse to grant any more, and the suit must be dismissed, unless the plaintiff withdraws with the leave of the Court. In Clause (b) of Section 100, *may* has been substituted for *shall*, so that the granting of successive summonses is in the discretion of the Court, and in considering the question, the Court will have regard to the conduct of the plaintiff, and to the opportunities which have been afforded him for serving previous summonses : for when a summons cannot be served otherwise substituted service may be allowed.

Dismissal of suit on failure to serve successive summonses.  
C. 100 (b).



In what plaintiff may bring fresh suit or apply for restoration. C. 99. R. 38, 42, 44-5.

When a suit has been dismissed in consequence of the plaintiff's failure to pay the fee and issue the further summons, or in consequence of the non-appearance of *both* parties, the plaintiff may bring a fresh suit, or he may apply to the Court within *thirty days* from the date of the order of dismissal to restore the case; and if he satisfies the Court that there was a sufficient excuse for his not paying the court-fee and issuing the further summons, or for his non-appearance, the Court shall set aside the dismissal, restore the case, and appoint a day for proceeding with the suit.

Better practice in small

The simplest course in petty cases of small value, if the claim is not barred by limitation, is to institute a fresh suit. There will be a saving in time, cost and trouble by adopting this course.

Withdrawal of suit on failure to successive summonses.

Where a suit has been dismissed for failure to serve successive summonses, and not under ss. 97 and 98 of the Code, it cannot be restored, nor can a fresh suit be brought. A plaintiff, therefore, who has failed to serve his summonses, if he is present, should withdraw his suit and ask for leave to bring a fresh suit, instead of allowing it to be dismissed. If he shows good cause, the Court will allow him to withdraw.

Procedure when plaintiff only appears. C. 100 (a).

If the plaintiff appears, and the defendant does not appear, the Court takes evidence of the service of the summons. If satisfied that the summons has been properly served, it proceeds *ex-parte*, and grants the plaintiff a decree for the amount which appears to be due to him.

When not duly served. C. 100 (b).

If the due service of the summons, whether it be a first, second or further summons, is not proved,

the Court may order another summons and fix a day for its return. "Summons" in s. 100, means *any* summons.

If it appears that the summons has been served, but not in sufficient time as required by the rules of Court, the Court shall postpone the hearing to a future day, of which due notice shall be given to the defendant if he is absent. This notice is given by the issue of another summons, returnable on the postponed date.

When summons served, but not in due time. C. 100 (c).

Notice by

A summons fee is payable for every second or successive summons according to the scale in column 2 of Appendix F.

Second summons fee. App. F. col. 2.

If, on the day of hearing, the plaintiff is absent, and the defendant appears, the Court shall dismiss the suit, unless the defendant admits the claim, or any part of it, in which case the Court shall pass a decree upon such admission, and where a part only of the claim has been admitted, the suit shall be dismissed as to the remainder.

Procedure where defendant only appears. C. 102.

When a suit is wholly or partially dismissed, the plaintiff is precluded from bringing a fresh suit : but he may apply within *thirty days* to have the order of dismissal set aside ; and if it be proved that he was prevented by any sufficient cause from appearing on the day of hearing, the Court shall set aside the dismissal upon such terms as to costs as it thinks fit, and shall appoint a day for proceeding with the suit. No such order shall be made, unless the plaintiff has served the defendant with notice in writing of his application.

Decree against plaintiff by default bars fresh suit. Application to set aside order of dismissal. C. 103. I. L. A., XV, 1877, 2nd Sched., 3rd Divn., 163.

If the defendant be residing out of British India, and does not appear by agent or pleader, the Court, on being satisfied of the service of the summons on such defendant, may permit the plaintiff to proceed with

Procedure where defendant residing out of British India is absent. C. 104.

the suit in such manner and subject to such conditions as it thinks fit.

Where one or more of several plaintiffs is absent.  
C. 105.

In case of the non-attendance of one or more of several plaintiffs, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed, as if all the plaintiffs had appeared.

Where one or more of several defendants is absent.  
C. 106.

In case of the non-attendance of one or more of several defendants, the suit shall proceed, and the Court shall make such order as it thinks fit with respect to the defendants who do not appear. On proof of the service of summons on the absent defendants, the Court proceeds *ex-parte* against them.

Consequence of non-attendance of party ordered to appear in person.  
C. 107.

If a plaintiff or defendant has been ordered to appear in person, and does not appear in person or show sufficient cause for failing to appear, he shall be subject to all the provisions applicable to plaintiffs and defendants, respectively, who do not appear,—*i.e.*, if a plaintiff, his suit may be dismissed; if a defendant, he may have a decree passed against him.

C. 36, 120.

See also the second paragraphs of ss. 36 and 120 of the Code.

Setting aside decree *ex-parte* against defendant.  
C. 108, I. L. A. XV, 1877, 2nd Sched., 3rd Divn. 164.  
R. 38-42, 44-5.

A defendant against whom an *ex-parte* decree has been passed may apply within *thirty days* from the date of executing any process for enforcing the judgment, for an order to set it aside. If he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing at the hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into Court or otherwise, as it thinks fit, and shall appoint a day for hearing the suit.

The amount of the judgment, with costs, must, in all such cases, be deposited in Court, unless the Court shall otherwise order.

Deposit of debt and costs. R. 47.

No decree shall be set aside, except after notice in writing to the opposite party.

Notice to opposite party. C. 109.


If a suit is instituted in the Small Cause Court, which might have been instituted in another Court (notwithstanding that leave to sue has been granted under s. 18 of the Act), and the defendant or defendants do not actually and voluntarily reside, or carry on business, or personally work for gain within the local limits of the Small Cause Court, the defendant, or any defendant after giving notice in writing to the plaintiff, may apply to the Court to stay proceedings: and the Court, if satisfied, after hearing the parties, that justice is more likely to be done by the suit being instituted in some other Court, may stay the proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

Power to stay proceedings where all defendants do not reside within jurisdiction. C. 20.

When all the parties to a suit are present, and it appears that they are not at issue on any question of law or fact, the Court, after the necessary particulars are recorded, at once pronounces judgment.

Non-contested cases. C. 152.

Where there are more defendants than one, and any one of them is not at issue with the plaintiff on any question of law or fact, the Court usually at once pronounces judgment for or against such defendant, and the suit proceeds only against the other defendants.

If  of several defendants be not at issue with plaintiff. C. 153.

The Court may, in all cases, for sufficient reason, order that the amount of the decree shall be paid by instalments. If, therefore, a defendant desires to apply for instalments, he should do so when the

Instalments. C. 210.



Special  
notice when  
necessary.

Time for  
making appli-  
cation. I. L.  
A., XV, 1877,  
2nd Sched.  
3rd Divn.,  
175.

Court may in  
certain cases  
suspend exe-  
cution. A. 30.

decree is passed against him, although he may do so afterwards, provided the application be made within six months. But this involves the trouble and expense of serving the plaintiff with notice, and bringing the parties again before the Court. An application for instalments cannot be made after the expiry of six months from the date of the decree. See Indian Limitation Act, XV of 1877, 2nd Schedule, 3rd Division, art. 175.

Section 30 of the Act provides, that whenever it appears to the Court that any judgment-debtor is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or if the Court has ordered the amount to be paid in instalments the amount of any instalment, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of the decree and discharge the debtor or make such other order as it thinks fit. The object of this section is not to discharge a judgment debtor absolutely from payment of the decree, but to suspend execution and grant time during temporary disability to enable him to meet the decree—see the note to the section of the Act. But no order should be made under this section without notice to the opposite party.

Deposit in  
satisfaction  
of claim.  
C. 376.

Notice of  
deposit.  
C. 377.

Form.  
Apx. L. 13.

A defendant in any suit may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the plaintiff's claim.

Notice in writing of the deposit must be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall be paid to the plaintiff on his application. For form of notice see Appendix L. 13.



If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the Court decides that he is not entitled to more than the amount paid into Court, the plaintiff must pay all the costs of the suit incurred after the deposit, and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where plaintiff accepts satisfaction in part. C. 379.

If the plaintiff accept the payment in full of his claim, he shall present a statement to that effect to the Court. The statement shall be filed with the record, and the Court shall pass judgment accordingly; and in directing by whom the costs are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

As satisfaction in full.

The parties to a suit may apply in person, or by their pleaders, at any time before judgment, to refer the matters in dispute between them to arbitration.

Reference to arbitration. C. 506.

An arbitrator shall be nominated by the parties. If they cannot agree as to the nomination, or if the person nominated refuses to act, and the parties desire it, the Court shall nominate an arbitrator.

Nomination of arbitrator. C. 507.  
When Court to nominate.

When an arbitrator has been nominated, an order of reference is made out, which is signed by the Judge, and served on the arbitrator by the serving-officer of the suit with the assistance of the parties, when such assistance is necessary. A time is fixed in the order for the delivery of the award.

Order of reference. C. 508.

For form of order of reference see Appendix L. 15.

Form. Apx. L. 15.

If the arbitrator cannot complete the award within the time specified in the order, he may apply to the Court for an extension of time, which the Court if it

Court may extend time for making award.

Or cancel  
reference.

thinks fit, may grant : or it may cancel the order of reference, and proceed with the suit.

Reference  
to two or  
more arbitra-  
tors. C. 509.

If the reference is to two or more arbitrators, the order provides for ■ difference of opinion—(1) by the appointment of an umpire ; (2) by declaring that the decision of the majority shall prevail, if the major part of the arbitrators agree ; (3) by empowering the arbitrators to appoint an umpire ; (4) otherwise as may be agreed between the parties, or if they cannot agree, as the Court determines.

Death, in-  
capacity, &c.,  
of arbitrators  
or umpire.  
C. 510.

In the event of the death, incapacity, refusal or neglect of an arbitrator, the Court may either appoint a new arbitrator, or recall the arbitration and proceed with the suit.

Appoint-  
ment of um-  
pire by Court.  
C. 511.

When the arbitrators are empowered to appoint an umpire, and fail or neglect to do so, any of the parties may serve a notice on the arbitrators, calling on them to appoint one ; and if, within *seven* days or such other time as may be fixed, no umpire be appointed, the Court may appoint an umpire.

Arbitrator  
cannot dele-  
gate author-  
ity.

An arbitrator cannot delegate his authority to another : and where there are more arbitrators than one, and some of them are absent, those present cannot appoint others in their stead. *S. N. Singh v. G. P. N. Singh (a)*.

Summoning  
witnesses.  
C. 513.

The parties may have the same processes for each other or for their witnesses and the production of documents before an arbitrator as before the Court.

Punishment  
for default.

The penalties for non-attendance and non-compliance are the same ■ if the parties had been summoned before the Court.

The award must be made in writing, signed by the arbitrator. It should be forwarded or delivered to the Clerk of the Court, or the Clerk of the Bench before which the suit is pending, on or before the day to which the suit is adjourned, for the purpose of reading the award.

Award to be signed and filed in Court. C. 516.

The award, when received, is filed, and read in Court on the day to which the suit has been adjourned.

Reading award.

If a party desires to set aside an award, he must file his grounds within *ten days* from the date on which the award is read in Court. On the day the award is read, the matter is adjourned for this period to allow for the filing of an application in case one should be contemplated. If, on the eleventh day, or such other longer date as may be fixed, no application is filed, the award is confirmed and made the judgment of the Court, upon which a decree follows, which may be enforced in the same way as any other decree of the Court.

Procedure before confirmation. I. L. A., XV, 1877, 2nd Sch., 3rd Divn., 158.

Confirmation and judgment. C. 522.

The Court may, in certain cases, modify or correct an award.

Modification or correction of award. C. 518.

It may also, on particular grounds, set it aside.

Setting aside award. C. 521.

The Court may remit the award for the reconsideration of the arbitrator.

Remitting award. C. 520.

If the award is silent on the question of costs, the Court may, as it thinks fit, make an order respecting the costs of the arbitration.

Costs of arbitration. C. 519.

No application for a new trial or reference to the High Court will lie from an award.

No new trial or reference from award.

*II.—Contested Matters.*

Act 24, 25, 33. Code 53-4, 111—18, 120, 137, 140-41, 143, 145, 150-51, 156—58, 179—81, 193—97, 499-500. Rules 24, 28.

**Contested**

The parties, or their pleaders, being present, the Court ascertains from each party or his pleader the particulars of the claim and defence.

**Oral examination of party, &c., for the ascertainment of matters in dispute. C. 118.**

When the parties or their pleaders are unable to state clearly and accurately the nature of the claim or defence, or for the purpose of elucidating any matter in dispute, the Court may call and examine orally any party present in Court, or any person able to answer any material questions relating to the suit, and the Court may put any questions suggested by either party.

**Defence to be entered on record.**

When the defence is ascertained, it is entered on the record by the Bench Clerk.

**Amendments to be made at earliest opportunity. C. 34.**

If any amendment has to be made on behalf of either party, the application should be made at the opening stage, when, if allowed, it is entered on the record, and the case either proceeds or is adjourned, according to circumstances.

**Amendment and rejection of plaints. C. 53-4.**

Section 53 of the Code sets out the instances in which a plaint *may* be rejected or amended at the discretion of the Court; and s. 54, the cases in which the plaint *must* be rejected. When a plaint in the Small Cause Court is to be amended, it is not returned to the party for that purpose, but the amendment is made there and then in Court. When an order rejecting a plaint is made, it is entered on the record, and the plaint remains in Court. A plaint once filed never leaves the Court. The plaints are bound up into volumes, numbered and paged, and



constitute the records of suits kept in the Court, together with the exhibits.

A plaint cannot be altered or amended so as to convert a suit of one character into a suit of another and inconsistent character,—*i. e.*, if a plaintiff sues for the price of goods sold and delivered, he cannot alter his plaint into one for work and labour or for wages ; or if he has sued for the price of goods, he cannot alter the plaint to one for damages for not accepting goods.

When plaint cannot be altered.

All amendments must be signed by the Judge.

To be signed by Judge. C. 53.

The issues of fact and law having been ascertained, the party having the right to begin states his case and leads his evidence. The other party then states his case and produces his evidence.

Statement of case. C. 179.

The plaintiff has the right to begin, except when the defendant admits the plaintiff's facts and contends that either in point of law or on some additional facts, such as minority, or an allegation of payment, the plaintiff is not entitled to recover. In such case the defendant has the right to begin.

Rules as to right to begin.

The party beginning is entitled to reply if the opposite party has given any evidence, but not otherwise.

Reply. C. 180.

The evidence of the witnesses is taken orally in open Court in the presence and under the personal direction and superintendence of the Judge. The Judge is not required to take it down in writing ; but in all cases of importance, and as a general rule, the Judge takes notes of the evidence.

Examination of witnesses. C. 181.

When evidence has been taken *de bene esse*, under s. 192 of the Code, and is intended to be used, the party on whose behalf it has been taken should read and tender it before closing his case.

Reading and tender of evidence taken *de bene esse*. C. 192.



Court may recall and examine witness. C. 193.

The Court may, when the case is closed, or at any stage of the suit, recall any witness who has been examined, and (subject to the provisions of the Evidence Act) put such questions to him as it thinks fit.

Court may send for its own or the records of other Courts. C. 137.

The Court may, of its own accord, and may, in its discretion, upon the application of any of the parties, send for, either from its own records, or from any other Court, the record of any suit or proceeding, and inspect the same.

Application for production of records.

When a record of another Court is required by a party to the suit, an application should be made in sufficient time before the trial to allow of its production at the trial, and thus save an adjournment; see note to s. 137 of the Code. Records of the Small Cause Court required as evidence should be subpoenaed through the Clerk of the Court at least one clear day before the day of trial.

Small Cause Court records. R. 24.

Reception of documents. C. 140.

The Court receives the documents respectively produced by the parties, except when it considers the documents irrelevant or inadmissible.

Rules as to admission and return of documents. C. 141.

Every document tendered in evidence must be proved or admitted in accordance with the law of evidence. Every document proved or admitted is endorsed with the title of the suit, the name of the person producing it, and the date on which it is produced. The document, if not returned immediately under s. 25 of the Act, is filed in the Record Office of the Court. Documents not immediately returned may be received back eight days after the decision in the suit, if no new trial or rehearing has been applied for. This does not apply to documents which, by force of the decree, have become void or useless.

All documents produced, but not proved or admitted, are returned to the parties producing them at once.

If the document is an entry in a shop or other book, ■ copy may be furnished for record, if required. But the original must always be produced at the trial.

Entries in shop-books.  
C. 141.

The Court may, for sufficient cause, order any document to be impounded, and kept in the custody of ■ officer of the Court for such period and subject to such conditions as it thinks fit.

Impounding documents.  
C. 143.

Under s. 33 of the Indian Stamp Act, the Court is bound to impound every document chargeable with stamp-duty and not duly stamped : and no such document is admissible in evidence.

Unsuccessfully stamped documents.  
I. S. A., I., 1879, 33.

But certain instruments are admissible on payment of the proper duty and penalty. In such cases, the Court levies the duty and penalty, and admits the document, which, with the money so received, is forwarded to the Collector of Stamp Revenue. The document is duly stamped and returned by that officer to the Court, when it may be received back by the party producing it, if it is a document which may be returned.

Documents admissible on payment of duty and penalty.  
*Ib.* 34.

When the document is one upon which the Court cannot take a penalty, it is impounded and forwarded to the Collector along with the name and address of the party producing it, and the Collector takes such steps in the matter as he thinks necessary. The document is not returned to the Court, and all further enquiry regarding it must be made of that officer,

Impounding of inadmissible documents.

Or if the Court should be of opinion that the stamp-duty or penalty chargeable on a document should

Adjudication by Collector.

be adjudicated or imposed by the Collector, it may adjourn the hearing, and refer the party producing the document to the Collector for the purpose of having the proper stamp affixed.

Reference  
to Account-  
ant. A. 33.

When the dispute between the parties is a matter of account, and both parties have accounts, the practice is to adjourn the case, and refer the accounts to an officer of the Court called the Accountant of Suitors' Disputed Accounts. This officer's duty is to fix a day for the attendance of the parties, examine their accounts, ascertain the items in dispute in their presence, and report to the Court on the day fixed for the hearing. The Court is accordingly enabled at the hearing to deal at once with the disputed points, and the trial is confined to these points unless other defences are taken. The Accountant has no judicial or other authority, and can make no award. His duty is confined solely to ascertaining the character of the dealings and the nature of the dispute between the parties.

Adjourn-  
ments.  
C. 156.

The Court may, at any stage of a case, on sufficient cause being shown, grant time to the parties, and may from time to time adjourn the hearing. In all such cases a day is fixed for the hearing or further hearing of the case, and the Court makes such order as to costs as it thinks fit.

Procedure on  
adjourned  
date. C. 157.

If, on the adjourned date, the parties or any of them fail to attend, the Court proceeds as in an *ex-parte* case, or makes such other order as it thinks fit.

Court may  
proceed not-  
withstanding  
default of  
party, &c.  
C. 158.

If any party to whom time has been granted fails to produce his evidence or witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, not-

withstanding such default, proceed to decide the suit forthwith.

Section 24 of the Act provides that, except in cases of set-off, no written statement shall be received unless required by the Court. In some cases, however, the Court does require written statements. In these cases the provisions of ss. 114 to 116 of the Code have to be observed. See also note to s. 24 of the Act.

Written  
Statements.  
A. 24.  
C. 114-116.

If a defendant desires to file a set-off against the plaintiff's claim, he may do so under s. 111 of the Code. It must be in respect of an *ascertained* sum of money legally recoverable by the defendant from the plaintiff, and both parties must *fill the same character* as they fill in the plaintiff's suit.

Set-off.  
C. 111.

The set-off must be in writing, and must be filed in Court at least *two* clear days before the returnable date of the summons, unless the Court fixes some other time for filing the same.

Time for  
filing.  
R. 28.

If an extension of time is required, the application must be made within the time allowed for filing the set-off, and not afterwards. The Court cannot extend the time after the period for making the application has expired.

Extension  
of time.

The Court may, at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit on such conditions as the Court thinks reasonable. But if either party *bonâ fide* desires the production of the witness for cross-examination, and the witness can be produced, the evidence shall not be taken by affidavit.

Affidavits.  
C. 194.

If evidence has been given by affidavit, the Court may, at the instance of either party, order the declarant to appear in Court for cross-examination, unless the

Declarant  
may be  
ordered to  
appear.  
C. 195.



declarant is exempted from personal appearance in Court, when he can only be examined by commission.

Issues by agreement of parties.  
C. 150.

When the parties to a suit are agreed to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing, binding themselves to abide by the decision of the Court.

Decree upon.  
C. 151.

Upon the judgment so given, a decree may be entered up and executed in the ordinary way.

Detention, preservation or inspection of property.  
C. 499.

The Court may, at any time, make an order for the detention, preservation or inspection of any property being the subject of the suit; may authorize any person to enter upon or into any land or building in the possession of any party to the suit; and may authorize any samples to be taken or any observation to be made or experiment to be tried which may seem necessary or expedient for the purpose of obtaining full information or evidence.

### Judgment and Decree.

Act 26, 33, 76. Code 198-9, 206, 208-10, 216-21, 256,  
Rules 34-37. Apx. A, G.

Judgment when pronounced.  
C. 198.

The evidence having been taken and the parties or their pleaders heard, the Court pronounces judgment either at once or adjourns the case to some future day, fixed at the time for the purpose.

Written judgment.

The Judge is not required to deliver a written judgment: but in cases of difficulty, novelty or importance, this course is generally followed. Either party to the suit or his pleader is entitled to take a copy of the written judgment, if such judgment has been filed with the Record-keeper.

Copy may be taken by party or pleader.  
Apx. A. 11.



A Judge may pronounce ■ judgment written by his predecessor or by another Judge of the Court, but not pronounced.

Judgment of one Judge may be pronounced by another.  
C. 199.

The decree is entered on the record. It states, if for the plaintiff, the amount decreed and the order, if any, as to costs, with the term of imprisonment in the event of personal execution being applied for. If for the defendant, an order dismissing the suit is entered up, and for the costs, if any, allowed.

Contents of decree.  
C. 206.

If any clerical or arithmetical error has been made in entering the decree, the Court shall, of its own motion, or on that of any of the parties, amend the decree, but reasonable notice must be given to the parties or their pleaders of the proposed amendment.

Amendment of decree.  
C. 206.

When the suit is for moveable property, and the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative, if delivery cannot be had.

Decree for delivery of moveable property.  
C. 208.

The Court may order interest to be paid on the sum decreed at such rate as it deems reasonable.

Interest on money-decree.  
C. 209.

The Court may order the amount to be paid by instalments with or without interest.

Instalments.  
C. 210.

When an order is made for instalments, such instalments are, in the absence of any direction to the contrary, payable monthly, and in default of payment of any one instalment, the whole decree or balance thereof becomes due.

How payable.  
R. 34.

If a set-off has been allowed, the decree shall state the amount due to the plaintiff, and the amount (if any) due to the defendant, and shall be for the amount due to either party.

Decree when set-off is allowed.  
C. 216.

Effect of  
decree award-  
ed to defend-  
ant. C. 216.

The award of any amount due to a defendant is subject to the same rules as to new trial as if the defendant had recovered the sum in a separate suit.

Execution  
for balance.

Execution may issue in the ordinary way against the party indebted for the balance.

Compensa-  
tion, costs, &c.  
A. 26. C. 220.  
Apz. G. 4.

Compensation, costs and the fees of legal practitioners are in the absolute discretion of the Court. Ordinarily the costs and pleader's fees follow the judgment. Other cases are subject to special orders.

When a suit is dismissed, and compensation or costs are ordered to the defendant, he may have execution for the same in the ordinary way.

Decree  
against exe-  
cutor, &c.  
R. 35.

The ordinary decree against an executor, administrator or legal representative shall be, that the decree be levied out of the moveable property of the deceased in the hands of such executor, administrator or legal representative.

When execu-  
tion may  
issue against  
executor, &c.,  
in person.  
R. 36.

When an ordinary decree has been made as last mentioned, the plaintiff may apply to the Court that the decree may be executed against the defendant in person and not in his representative capacity: and the Court, if it is satisfied that the defendant has misapplied the property of the deceased come to his hands and improperly withheld payment, may make an order that the decree or any portion thereof be executed against the defendant in person, and not in his representative capacity.

Vexatious  
or groundless  
defence by  
executor, &c.  
R. 37.

When a defendant is sued as executor, administrator or legal representative, the Court may, if it think any defence raised by him vexatious or groundless, and there be no property of the deceased in his hands, pass a decree against such defendant in person, and not in his representative capacity.

The Court may, when the decree does not exceed one thousand rupees, on the oral application of the plaintiff at the time of passing the decree, order immediate execution against the person or moveable property of the judgment-debtor.

Immediate execution of decree not exceeding 1,000 rupees. C. 256.

Certified copies of the proceedings and decree in all cases shall be furnished to the parties on application, and at their expense.

Certified copies of proceedings and decree. C. 217.

Ordinarily all matters subsequent to decree are heard by the Registrar, but applications in respect of any suit before decree have to be made to the Bench before which the suit is pending, and also all applications under ss. 99, 103, and 108 of the Code. See s. 33 of the Act and note.

Applications subsequent to decree A. 33.

### Execution of Decree.

Act 27—31, 95. Code 223, 225, 230—34, 243—44, 246—52, 254, 256—59, 266—73, 275—82, 284—86, 290—303. Rules 19, 22, 26-7, 49—52, 55. Apx. A. H. J. K. L. M.

A suitor having obtained his decree is naturally anxious to reap the benefit of it. It has been said, with some truth, that his difficulties only then begin, but these difficulties are usually outside the procedure laid down for the execution of decrees. If the money ordered to be paid by the decree is not forthwith deposited in Court, or where instalments have been ordered on the dates fixed for the payment of the instalments, the decree-holder may take out execution either against the moveable property or the person of the judgment-debtor. If the amount of the judgment has been paid into Court in satisfaction of the decree, and a new trial has not been applied for, it may be withdrawn at once. If a new trial has

When execution may issue.

been applied for, it must remain in Court till the application has been heard and the case finally disposed of.

Form and  
contents of  
application.  
R. 22.  
Apz., L. 7.

When the holder of a decree desires to enforce it by execution, the application must be on a form provided for that purpose, and must contain the following particulars :—(1) The title of the suit : (2) The date of the decree : (3) The amount of the decree and costs : (4) The mode in which execution is required, *i.e.*, whether against the person or against the moveable property of the judgment-debtor. If any money has been paid out of Court to the decree-holder, the amount so paid must be stated. Satisfaction in part for the sum so paid is then entered in the after-judgment record, and execution for the balance only is issued. A decree-holder should be careful on this point, as if he issues execution for a larger sum than is due to him, he may have to pay compensation to the judgment-debtor.

Warrant fee.  
A. 72, Fourth  
Sched., col. 4.

The application after being filled up is taken to the Stamp Office as in the case of a plaint, where the fee is paid and the stamp affixed. For the scale of fees see column 4 of the Fourth Schedule to the Act. It is next taken and filed in the Warrant Office. The superintendent of the department grants a receipt for it, as of course.

Execution  
against  
person and  
property not  
allowed at the  
same time.  
C. 230.

The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor, and as a general rule execution is not allowed to issue against both at one and the same time.

Application  
by joint  
decree-  
holder.  
C. 231.

Any one or more persons in whose favor a decree has been passed or his or their representatives may apply for execution for the benefit of all : or where any



of them has died, for the benefit of the survivors and the representatives in interest of the deceased. In such a case, the Court shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application. This is done by serving them with notice of the applica-

Notice.

tion and calling upon them to show cause (if any) why the decree should not be executed as applied for. A transferee of a decree by assignment in writing, or by operation of law, may apply for execution in the same way as an original decree-holder. But where a decree has been transferred by assignment, notice of the application for execution must be given to the trans-

Application by transferee of decree. C. 232.

Notice.

ferror and to the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution. Where a decree for money against several persons has been transferred to one of them, it cannot be executed against the others. A transferee of a decree holds it subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Transferee holds subject to certain equities. C. 233.

If a judgment-debtor dies before the decree has been fully executed, the holder may execute it against the legal representative of the deceased. But such representative is liable only to the extent of the property of the deceased which has come to his hands, and has not been duly disposed of. The Court may, of its own motion, or on the application of the decree-holder, compel the representative to produce such accounts as it thinks fit for the purpose of ascertaining such liability.

Execution against representative of deceased judgment-debtor. C. 234.

If the enforcement of a decree be applied for against the legal representative of a party deceased, a notice to show cause why the decree should not be executed

Notice to show cause why decree should not be executed. C. 235.



must issue to the party against whom execution is applied for before execution can issue. If a previous application for execution against the same person has been made, the rule does not apply. But the person must have had due notice of the previous application. Where a notice has been issued and duly served, and no cause is shown, execution may issue. If cause is shown, the Court considers and disposes of the objection. If the objection is disallowed, execution issues.

Stay of execution pending decision in a cross-suit. C. 243.

If a suit be pending in the Small Cause Court or in any other Court against the holder of a decree at the instance of the judgment-debtor, the Court may (if it thinks fit) stay execution of the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

Questions to be decided by Court executing decree. C. 244.

Questions arising between the parties to the suit or their representatives, and relating to the execution, discharge or satisfaction of the decree, must be determined by order of the Court executing the decree, and not by a separate suit.

Cross-decrees. C. 246.

If there be cross-decrees between the same parties, the smaller may be set off against the larger, and execution shall only issue for what remains after deducting the smaller sum, and satisfaction shall be entered on the decree for the smaller sum. If the two sums be equal, satisfaction shall be entered upon both decrees. The decrees, however, must be decrees capable of execution at the same time by the Small Cause Court. The rule applies where either party is an assignee of one of the decrees, and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself. But

the rule does not apply unless the decree-holder in ~~one~~ of the suits in which the decrees have been made is the judgment-debtor in the other, and each party fills the same character in both suits : and the sums due under the decrees are definite.

When the plaintiff and defendant are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party : but satisfaction for the smaller sum shall be entered on the decree. When the amounts are equal, neither party shall have execution, but satisfaction for each sum shall be entered on the decree.

Cross-claims  
under same  
decree.  
C. 247.

When the application for execution has been filed and found to be in order, ■ warrant issues.

Issue of  
warrant,  
C. 250.

The warrant is dated the day on which it is issued, it is signed by the Clerk of the Court, and sealed with the seal of the Court, and delivered to an officer for execution.

Date, signa-  
ture, seal, and  
delivery.  
C. 251.

All warrants are returnable within *one month* from the date of issue. A warrant which has expired cannot be executed. A fresh warrant must be applied for.

Warrant  
when return-  
able. R. 26.

A warrant cannot be executed against *any* person on a *Sunday, Christmasday, or Good Friday* : or on any Hindu on the four days of *Doorga Poojah*, known as *Saptami, Ashtami, Navami, and Dashami* ; or on any Mahomedan on the following four days,—*Eed-ul-Fitre, Eed-uz-Zoha (or Bukri-eed), and the last two days of Mohurrum*.

Days on  
which war-  
rant cannot  
be executed.  
R. 27.

The officer entrusted with the warrant must endorse upon it the day and manner in which it was executed. If property has been attached an inventory of the

Endorsement  
of execution.  
C. 251.  
Apx. A. 19.

property must be made on the back of the writ and a notice served on the judgment-debtor, at the same time stating the time of the sale in default of payment of the amount and costs for which the warrant has issued. The officer may either remove the attached property at once to the Court premises, or may put men in charge of it at the place where it has been attached, till the day of sale. If a writ has not been executed, *the reason for the non-execution must be endorsed on it*, and the warrant returned to the Court.

Warrant  
against re-  
presentative  
of deceased  
person.  
C. 252.

If the warrant be against the representative of a deceased person, it is in a particular form, and may be executed by the attachment and sale of the property of the deceased in the hands of the representative. If no such property be found, it cannot be executed against the personal property of the representative.

Person  
requiring  
execution to  
accompany  
bailiff. R. 19.

When any warrant is to be executed, the person requiring its execution or some one on his behalf must accompany the bailiff to point out the person or property to be attached.

Payment in  
satisfaction  
of decree.  
C. 257.

All money payable under a decree must be paid:—  
(1) into Court; (2) to the decree-holder; (3) as the Court may direct by special order.

Agreement to  
give time.  
C. 257A.

Every agreement to give time for the satisfaction of a judgment shall be void, unless made for consideration and with the sanction of the Court.

Agreement in  
satisfaction  
when void.

Every agreement for the satisfaction of a decree, providing for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under a decree, shall be void unless made with the sanction of the Court. Any sum paid in contravention of this rule shall be applied to the satisfaction of

the decree, and the surplus (if any) only shall be recoverable under the decree.

Every adjustment of a decree out of Court, as well as every payment of money to a decree-holder, must be reported to the Court. A judgment-debtor may inform the Court of such payment or adjustment, and apply for a notice to the decree-holder to show cause why such payment or adjustment should not be recorded; and if, after due notice, the decree-holder fails to appear or to show cause why the payment or adjustment should not be recorded, the Court shall record the same. No such payment or adjustment shall be recognized unless it has been so reported and recorded.

Adjustment  
or payment  
out of Court.  
C. 258.

Where the decree is for a specific moveable, it may be enforced by the seizure, if practicable, of the moveable, and by the delivery thereof to the decree-holder or to such person as he may appoint to receive it; or by the imprisonment of the judgment-debtor, or the attachment of his moveable property, or both.

Attachment  
of specific  
moveables.  
C. 259.

The following moveable property is liable to attachment and sale:—goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government-securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public company or corporation, and all other saleable moveable property belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power, which he may exercise for his own benefit, and whether the same be held in his own name or by another person in trust for him or on his behalf.

Property  
liable to  
attachment  
and sale.  
C. 266.



Tiled huts  
and remove-  
able things  
attached to  
immoveable  
property.  
A. 28.

Tiled huts or anything attached to immoveable property, of which the judgment-debtor is ■ tenant at the time of the attachment, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, may be attached and sold. Such property, if sold, may be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such hut or thing.

Livestock.  
Apx. M.

When livestock has been attached, the person causing the attachment must pay the feeding charges according to the scale in Appendix M.

Apx. A. 18-29

See also the rules relating to the attachment of property and the payment of pcon's wages in Appendix A. 18—29.

Property not  
liable to at-  
tachment  
and sale.  
C. 266.

The following particulars are not liable to attachment and sale :—the necessary wearing apparel of the judgment-debtor, his wife and children ; tools of artizans ; agricultural implements, if in use ; books of account ; mere rights to sue for damages ; any right of personal service ; stipends and gratuities allowed to military and civil pensioners of Government, and political pensions ; the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount ; the pay and allowances of persons to whom the Native Articles of War apply ; the wages of labourers and domestic servants ; an expectancy of succession by survivorship or other merely contingent or possible right or interest ; a right to future maintenance.



The salary of ■ public officer or servant of ■ Rail-way Company may be attached by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct until the further orders of the Court.

How salary  
may be  
attached.  
C. 268.

As to the different modes of attaching particular kinds of moveable property through the Court, see ss. 268 to 275 and 296 to 303 of the Code.

Attachment  
in particular  
cases.  
C. 268-275,  
296-303.

No bailiff or other person executing any warrant or process shall enter any dwelling-house for the purpose of seizing moveable property after sunset and before sunrise, or shall break open any *outer* door of a dwelling-house. But when access has been duly gained to any dwelling-house, the door of any room in which there is reason to believe property may be contained, may be unfastened and opened.

Seizure of  
property  
in building.  
C. 271.

If the room be a *zenana* in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the officer shall give her notice that she is at liberty to withdraw; and after allowing a reasonable time for withdrawal, and giving every facility for withdrawing, he may enter the room for the purpose of seizing the property, using at the same time every precaution consistent with these provisions to prevent its clandestine removal.

Zenana.

When an attachment has been made by actual seizure or by written order duly intimated and made known, any private alienation of attached property, whether by sale, gift, mortgage or otherwise, and any payment of the debt or dividend or delivery of the share so attached to the judgment-debtor or any one else during the continuance of the attachment, shall be

Alienation of  
attached pro-  
perty void.  
C. 276.

void as against all claims enforceable under the attachment.

Money attached may be paid in satisfaction of decree. C. 277.

If coin or currency notes be seized, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over in satisfaction of the decree.

Discharge of judgment-debtor or release of property on giving security. A. 29. R. 55. Appx. H.

If a judgment-debtor who has been arrested or whose property has been seized in execution of a decree offers security to the satisfaction of the Court for payment of the amount of the decree and costs, the Court may order him to be discharged, or the property to be released. No such order should be made without notice to the decree-holder. If the Court should grant the application, the judgment-debtor must enter into a bond with or without sureties, as the order may direct, as security for the payment of the decree, and also a warrant to confess judgment thereon. The bond must be stamped. For scale of stamp duty, see Appendix H.

Attachment of immoveable property. A. 81.

Immoveable property can only be attached and sold in execution of a Small Cause Court decree by transferring the decree under s. 31 of the Act, either to the High Court, if the immoveable property be situate within the local limits, or to any Civil Court within the local limits of whose jurisdiction such immoveable property may be found. But this cannot be done so long as the judgment-debtor has any moveable property within the local limits of the Small Cause Court, which may be attached.

Transfer of decree to another Court. A. 31. C. 223-225.

A decree of the Small Cause Court may also be transferred for execution to any other Court under s. 31 of the Act and ss. 223 and 225 of the Code.

Sales are conducted by an officer of the Court, either on the Court premises or at such other place as may be appointed for the purpose, of which due notice must always be given.

Sale of attached property. C. 286.

See also Appendix A, Rules 18 to 29.

Apx. A. 18-29.

No sale of attached property shall take place (except with the consent in writing of the judgment-debtor) until after the expiration of at least *ten days*, calculated from the date on which the attachment was made.

Time of sale. C. 290.

If the property be of a perishable nature, or when the expense of keeping it will exceed its value, the officer may sell it at once.

Perishable property. C. 269.

The sale shall be stopped if, before the lot is knocked down, the debt and all costs are tendered to the officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into Court.

Sale to be stopped on payment of debt & costs.

No officer having any duty to perform in connection with any sale, shall either directly or indirectly bid for or buy any property put up for sale.

Officer not to bid or buy. C. 292.

No decree-holder shall, without the express permission of the Court, bid for or purchase the property.

Decree-holder not to bid or buy without permission. C. 294.

Sections 278 to 281 of the Code, and Rules 49 to 51, provide for the filing and investigation of claims to attached property.

Claims to attached property. C. 278-81. R. 49-51.

An application to substitute money for and release attached property, which is the subject of a claim, should not be granted without notice to the opposite party and the proper identification of the seized property.

Substitution of money for property.

Resistance to  
execution.  
C. 328-330.  
R. 52.

Resistance to execution is provided for by ss. 328 to 330 of the Code. Rule 52 lays down the procedure to be followed in making a complaint.

Arrest of  
judgment-  
debtor.  
C. 336.  
R. 27.

A judgment-debtor may be arrested at any hour and on any day, except the days mentioned in Rule 27. He must, with all convenient speed, be brought before the Court for examination, and, if necessary, commitment to jail. But no dwelling-house shall be entered between sunset and sunrise, and no *outer* door of a dwelling-house shall be broken open for the purpose of making an arrest. But if the officer has duly gained access to a dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found. If the room be a *zenana* in the actual occupancy of a woman who is not the judgment-debtor, the officer may enter after giving due notice as in the case of seizing goods.

Release on  
payment.

If the judgment-debtor pays the amount of the decree and costs to the officer, he shall at once be released.

Subsistence-  
money.  
C. 338.  
Apz. J.

Subsistence-money must be paid by the person issuing the warrant at the prescribed rates. The allowances are calculated at a *daily* rate.

No arrest  
before pay-  
ment of sub-  
sistence-  
money.  
C. 339.  
Apz. J.

No judgment-debtor shall be arrested unless and until diet-money is paid. The first payment shall be made before the warrant is executed and shall be for such portion of the current month as remains unexpired, and the subsequent payments to the officer in charge of the jail. The payments shall be made in advance before the first day of each month.

Subsistence-  
money to be  
costs in suit.  
C. 340.

Subsistence-money shall be costs in the suit recoverable from the judgment-debtor.



The judgment-debtor shall be released (1) on payment of the amount mentioned in the warrant to the officer in charge of the jail; (2) on the decree being otherwise fully satisfied; (3) at the request of the person on whose application he has been imprisoned; (4) on failure to pay diet-money as directed by the Code; (5) when the term of his imprisonment has been fulfilled. In the *second* and *third* cases mentioned, he shall not be discharged without the order of the Court.

Release of judgment-debtor.  
C. 341.

A judgment-debtor discharged on any of these five grounds is *not* thereby discharged from the debt; *but he cannot be re-arrested under the same decree.*

No person shall be imprisoned for a longer period than six months in any case, or for a longer period than six weeks on a decree not exceeding fifty rupees, exclusive of costs. For scale of imprisonment see Appendix K.

Term of imprisonment.  
C. 342.  
Apx. K.

Male judgment-debtors are imprisoned in the Presidency Jail, and females in the Russa Jail.

Place of imprisonment.  
A. 95.

## New Trial.

Act II, 37, 69. Code 99, 103, 108. Rules 42, 44—48.

There is no appeal from a judgment of the Small Cause Court. Every decree and order in a suit is final and conclusive, but a party against whom a judgment or order has been passed may apply for a new trial.

Judgment of Court final.  
A. 37.

Sections 99, 103 and 108 of the Code provide for the setting aside of *ex-parte* orders and decrees.

*Ex-parte* orders and decrees.  
C. 99-108.

Section 37 of the Act relates to contested cases in which the parties have appeared. In such cases the

New trial in contested cases, A. 37.



Court may, on the application of either party, made within *eight* days from the date of the decree or order, direct a new trial to be held, or alter, set aside or reverse the decree or order upon such terms as it thinks reasonable, and may in the meantime stay the proceedings.

Application  
how made.  
R. 44.

An application in duplicate must be presented to the Court : one copy must be served on the party against whom the application is made, ordinarily at least *four* clear days before the date fixed for the hearing of the application. The service shall be made in the same manner as a service of summons.

Contents of  
application.  
R. 45.

In every application the grounds shall be fully and distinctly set out, and the applicant shall, at the hearing, be restricted to the grounds contained in his application.

Certificate  
of advocate,  
&c. R. 46.

When the applicant has appeared at the original hearing by advocate or pleader, the application must ordinarily be supported by a certificate of such advocate or pleader, that in his opinion there are good grounds for the application.

Deposit of  
debt and  
costs. R. 47.

Before any such application is presented to the Court, the amount of the decree (if any) shall be paid into Court, and the applicant shall obtain a certificate of having done so from the proper officer of the Court. The Bench to which such application is presented may, if it thinks fit, dispense with such payment; but in the case of an application where both parties have appeared at any hearing of the original matter, only on security being given to the satisfaction of the Bench.

Bench before  
which appli-  
cation to be  
made.

The application should be made, in the first instance, to the Bench which passed the decree or order against which application is made.

Applications in *ex parte* matters are heard by one Judge, ordinarily the Judge who passed the decree or order sought to be set aside or modified.

*Ex parte* applications before one Judge.

Applications under s. 37 of the Act shall be heard before two Judges at least, one of whom shall be the Judge who tried the matter in respect of which the application is made, and the other the Chief Judge. If the matter was heard by the Chief Judge, one or more Judges shall sit with him to hear the application. The Chief Judge, or, in his absence, the senior Judge, may direct that any Judges other than those specified may hear the application.

New trial applications before two or more Judges. R. 48.

The Court may order (1) a new trial to be had, or (2) alter, set aside or reverse the original decree or order without a new trial.

Power of Court as to new trials. A. 37.

As to the grounds upon which a new trial may be granted see note to s. 37 of the Act.

Grounds for new trial. A. 37.

If the Judges sitting together differ on any question of fact, the opinion of the majority prevails; and if the Court is equally divided, the Chief Judge, if he is one of the Judges differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice. But if the question upon which the Judges differ be a question of law or usage having the force of law or the construction of a document, which construction may affect the merits of the case, the question must be referred for the opinion of the High Court.

Procedure in case of difference of opinion. A. 11, 69.

## Reference to the High Court.

Act 69, 70. Code 617—21. Apx. A.

References of  
two kinds.  
A. 69. C. 617.

There are two classes of references: (1) compulsory, under s. 69 of the Act; (2) optional, under s. 617 of the Code.

Compulsory  
references.  
A. 69.

When two or more Judges sit together and differ in opinion on any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, or in any suit or proceeding exceeding five hundred rupees in value, and either party requests a reference, the Court shall refer the question raised for the opinion of the High Court.

Optional  
references.  
C. 617.

In suits not exceeding five hundred rupees in value, when any question of the kind just mentioned arises, the Court may of its own motion, or at the request of either party, refer such question for the opinion of the High Court; but it is not bound to do so.

Security for  
debt and  
costs. A. 70.

When a judgment is given under s. 69, contingent upon the opinion of the High Court, the party against whom it is given shall *at once* furnish security to be approved by the Court for the amount of the judgment and costs (if any) and for the costs of the reference. A deposit is always the simplest form of security, and when the Court has ordered the amount of the judgment (if any) and the costs of the reference to be deposited no other security shall be required. *Forty-eight hours* is allowed for furnishing security or making a deposit. The statement of the case is not drawn up until the money has been deposited in Court or security furnished. Unless the security in

one form or another is given within the time allowed, the party against whom the contingent judgment has been passed shall be deemed to have submitted to the same, the judgment becomes final, and execution may thereupon issue in the ordinary way.

The scale of costs for references is as follows:—

In cases up to Rs.	500	...	...	Rs.	100
„ between „	500 and Rs.	1,000	...	„	230
„ „	1,000 and „	1,500	...	„	330
„ „	1,500 and „	2,000			
	and over	...		„	460

Scale of costs for references. Apx. A. 36.

The Court may, however, reserve judgment pending the opinion of the High Court, instead of passing a contingent judgment. In such case no security or deposit is required beyond the costs of the reference.

Court may reserve judgment. A. 69.

Nor is security required in any case in which the Judge submits a question of his own motion under s. 617 of the Code. In such case no execution shall be issued, property sold, or person imprisoned until the receipt of the judgment of the High Court.

Security required when Judge submits question. C. 617.

The costs consequent on a reference shall be costs in the case to be paid by the party against whom the decision of the High Court shall be given, unless the High Court otherwise directs.

Costs of reference to be costs of suit. C. 620.

## Re-hearing by the High Court.

Act 38—40, 71.

The 38th section of the Act provides, that any party may, within *eight days* after the judgment in any suit in the Small Cause Court exceeding one thousand rupees in value, apply to the High Court for a re-hearing.

Application to High Court. A. 38.



To be supported by affidavits and certificate of advocate, &c.

The application shall be supported by affidavits, and in case the applicant has appeared in the Small Cause Court by advocate, vakil, attorney or pleader, by a certificate from such advocate, vakil, attorney or pleader, that in his opinion there are good grounds for re-hearing the suit ; and if, on hearing such application, the High Court is of opinion that there has been ■ miscarriage or failure of justice, or that there are good grounds for such re-hearing, the Court shall make an order *ex parte* in such terms as it thinks fit for such re-hearing, and fix a day for the same, whereof notice shall be given to the opposite party.

See also para. 3 of s. 38 of the Act and ss. 545-47 of the Code.

Procedure.  
A. 89.

The case shall (if a re-hearing is ordered) be re-heard and determined in the High Court as if the case were a suit brought in the Ordinary Original Civil Jurisdiction of the High Court.

Decree may be executed by High or Small Cause Court. A. 40.

Any decree or order made by the High Court upon the re-hearing may either be executed by the High Court, or may be remitted to the Small Cause Court for execution.

Fees to be paid before receipt of application. A. 71.

Before an application under s. 38 can be heard in the High Court, the party applying must pay the fees required for a suit of the same amount or value in the Small Cause Court. Section 71 of the Act provides that no such application shall be received by the High Court until such fees have been paid.

### Superintendence of High Court.

Act 6, 9, 90-91. Code 25, 622.

Small Cause Court subject to superintendence of High Court. A. 6.

Section 6 of the Act declares that the Small Cause Court shall be deemed to be subject to the superintendence of the High Court within the meaning of



the Letters Patent, dated 28th December 1865, and within the meaning of the Code of Civil Procedure: and the High Court has, in respect of the Small Cause Court, the same powers ■ it has under the 24 and 25 Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

All rules of practice have to be sanctioned by the High Court. Rules of Practice. A. 9.

The High Court prescribes the registers and returns to be submitted to itself. Registers and Returns. A. 90.

The Small Cause Court is required to comply with such requisitions as may be made by the High Court for records, returns and statements in such form and manner as the High Court thinks fit. Requisitions by High Court. A. 91.

The High Court may transfer a suit pending in the Small Cause Court to its own file, or to the file of any other Court competent to try the same, for trial. Power to transfer suits. C. 25.

The High Court may call for the record of any case in which no appeal lies to the High Court (and no Small Cause Court case is appealable) if the Small Cause Court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise ■ jurisdiction so vested, or to have acted in the exercise of its jurisdiction, illegally, or with material irregularity, and may pass such order in the case ■ it thinks fit. Power to call for records. C. 622.

### Recovery of Possession of Immoveable Property.

Act 41—49, 71—72. Rule 53. Apx. F. L.

Chapter VII of the Act lays down the procedure to be followed in this class of cases. Procedure under ch. vii of the Act. A. 41.

Plaint and  
mode of cal-  
culating fees.  
A. 71, 72.  
R. 53. Apx. F.

A plaint must be filed in the ordinary way. The annual value of the tenement must be stated in the plaint. On this sum the fees are calculated as in ordinary cases. See Appendix F.

Service of  
summons;  
A. 42.

The summons must be served in the manner provided by the Code for the service of a summons on a defendant.

Order of  
possession.  
A. 43.  
Apx. L. 27.

If the applicant is held entitled to possession, he obtains an order from the Court addressed to a bailiff of the Court directing him to give possession of the property on a day mentioned in the order.

Stay of  
proceedings  
on giving se-  
curity. A. 47.  
Apx. L. 17.

The proceedings may be stayed on the occupant giving security to bring a regular suit to establish his title against the applicant. For form of Security Bond see Appendix L. 17.

Procedure  
when applica-  
ble. A. 41.

This summary procedure only applies to tenants or occupiers of immoveable property holding over after the expiry of the tenancy or determination of the occupation. The parties must stand in the position of landlord and tenant to each other. A question of purely adverse title cannot be tried under the Act. See note to s. 41 of the Act.

Recovery of  
possession no  
bar to suit to  
try title.  
A. 49.

The recovery of possession under the Act shall be no bar to the institution of a suit in the High Court for trying the title to the property.

### **Distresses for Rent.**

Act 50—68. Rules 27, 49—51. Apx. L.

Application  
for distress  
warrant.  
A. 53.  
Apx. L. 18.

A landlord may, under s. 53 of the Act, apply for a distress warrant for arrears of rent without filing a suit. For form of Application see Appendix L. 18.

There is no limit to the *amount* for which a distress may issue, but it must not exceed *one year's rent*.

Must not exceed one year's rent.  
A. 50.

A distress will not lie for any rent due to Government.

The application must be supported by an affidavit or affirmation to the effect in the form marked A in the third schedule to the Act.

Affidavit.  
A. 53.

The application may be made to any Judge or to the Registrar. It is usually made to the Registrar.

Application to Judge or Registrar.  
A. 51.

When the lease is in writing, it must always be produced.

Written lease to be produced.

The Court is not bound, as a matter of course, merely upon the affidavit to grant a warrant. It may, in its discretion, refuse to grant one and refer the applicant to his remedy by an ordinary suit.

Warrant in Court's discretion.

The warrant, when granted, is returnable in *six* days.

Warrant when returnable.

The *moveable* property only on the house and premises in respect of which the rent is claimed can be distrained. If, therefore, a tenant leaves one house and removes with his property into another owing rent, his property cannot be distrained on the new premises in respect of rent due for the former house.

What property may be distrained.  
A. 57.

No distress can be levied before sunrise or after sunset, or on the holidays mentioned in Rule 27.

When warrant may be executed.  
A. 55. R. 27

Sections 56, 57 and 58 lay down rules regarding the forcing open of places containing property, the property which may and may not be distrained and the impounding and securing of distrained property.

Mode of executing warrant.  
A. 56—58.

An inventory must be made of all property distrained, and notice of the intended appraisement and sale given to the tenant.

Inventory.  
A. 59.

Application  
to discharge  
or suspend  
warrant.  
A. 60—62.  
R. 49—51.

Section 60 provides for summary applications to discharge or suspend a warrant, and ss. 61 and 62 for claims by strangers to goods distrained, and for compensation to a debtor or claimant. See also Rules 49, 50 and 51.

Transfer of  
certain cases  
to High  
Court. A. 63.

Cases exceeding one thousand rupees in value may be transferred under s. 63 to the High Court.

Sale & pay-  
ment of pro-  
ceeds. A. 65.

If the money is not paid into Court within the time named in the notice to the tenant, and no claim has been preferred, and the goods have not been ordered to be released, they are sold by the appraiser of the Court. The costs of the distress are first deducted, and the balance paid in satisfaction of the landlord's claim. If any surplus remains, it is handed over to the tenant.

---

## *Proceedings in Particular Cases.*

### **Death, Marriage, and Insolvency of parties to ■ Suit.**

Code 361—372.

The death of a plaintiff or defendant does not cause the suit to abate if the right to sue survives.

No abatement by party's death. C. 361.

A suit does not abate by reason of the marriage of ■ female plaintiff or defendant, but may be proceeded with to judgment ; and if the decree is against a female defendant, it may be executed against her alone.

Nor by marriage of female party. C. 369.

If the case is one in which the husband is liable for the debts of his wife, the decree may be executed against the husband also : and in case of a judgment for the wife, execution may be issued by the husband where the husband is entitled to the subject-matter of the decree.

Execution against and by husband.

But in the case of a judgment against a married Christian woman, the Court may order that no personal execution shall issue against the wife.

Execution against Christian wife. Act III of 1874, s. 8.

A married woman may sue and be sued in her own name in respect of all matters connected with her separate property, and may maintain an action for wages or earnings acquired or gained by her.

Wife's separate property. Act III of 1874, s. 4.

The bankruptcy or insolvency of a plaintiff shall not bar a suit unless the assignee or receiver declines to continue the suit for the benefit of the general body of creditors, where the case is one which the assignee or receiver might maintain for their benefit. If the

When plaintiff's bankruptcy or insolvency bars suit. C. 370.



assignee or receiver neglects or refuses to continue the suit, or to give security for costs if required, the defendant may apply for the dismissal of the suit.

### **Security for Costs.**

Code 380—382.

When security for costs may be required.  
C. 380.

In the cases mentioned in s. 380 of the Code, security for costs may be required from a plaintiff at any stage of a suit.

Effect of failure to furnish security.  
C. 381.

On failure to furnish security, the suit may be dismissed.

### **Commissions to examine Witnesses, for Local Investigations and to examine Accounts.**

Code 383—400.

Commission to examine witness.  
C. 383.

The Court may, in the cases mentioned in s. 383 of the Code, issue a commission to examine witnesses on interrogatories or otherwise.

Commission for local investigations.  
C. 392.

In any suit or proceeding in which the Court deems a local investigation requisite or proper, it may issue a commission to such person as it thinks fit, directing him to make such investigation as it deems necessary and to report to the Court.

Commission to examine and adjust accounts.  
C. 394.

The Court may also order a commission to issue for the examination and adjustment of accounts.

Expenses of commissions.  
C. 397.

The Court may direct the expenses of a commission to be paid into Court by the party at whose instance or for whose benefit it is to issue before the commission is issued.

The powers of ■ commissioner are set out in s. 398 of the Code.

Powers of commissioners. C. 398.

Witnesses must attend before ■ commissioner and give evidence, and produce documents, in all respects ■ before the Court, and they are liable to the same penalties on failure to do so.

Witnesses before commissioners. C. 399.

Parties and their pleaders may also be required to attend before the commissioner, and on failure the commissioner may proceed *ex parte*.

Parties before commissioners. C. 400.

### Suits by or against Government or Public Officers.

Code 416—429.

Suits by or against the Government must be instituted by or against the Secretary of State for India in Council.

Secretary of State in Council. C. 416.

Two months' notice in writing must be given previous to the institution of a suit against the Secretary of State in Council, or any public officer in respect of an act purporting to be done by him in his official capacity.

Notice previous to suit. C. 424.

No warrant of arrest can issue in any such suit.

No arrests. C. 425.

The Government may undertake the defence of ■ public officer, and in such case any law officer of the Government, on being furnished with authority, may appear for the defendant.

Where Government undertakes defence. C. 426.

The Court may exempt a public officer from personal attendance in Court, if his absence from duty should be detrimental to the public service.

Exemption of public officers from personal attendance. C. 428.

When a decree is given against the Secretary of State or a public officer, in his public capacity, a time must be fixed for satisfying the decree. If it is not satisfied at the time specified, the Court must report

Procedure where decree against Government or public officer. C. 429.

the case for the orders of Government. If not satisfied within three months from the date of the report, execution may issue.

### **Suits by Aliens and by or against Foreign and Native Rulers.**

Code 430—32, 434.

When aliens  
may sue.  
C. 430.

Alien enemies residing in British India with the permission of the Governor-General in Council, and alien friends, may sue in Court as if they were subjects of Her Majesty. No alien enemy residing in British India without such permission or residing in a foreign country can institute a suit.

Foreign  
State. C. 431.

A Foreign State may sue in certain cases.

Persons ap-  
pointed by  
Government  
to sue and  
defend.  
C. 432.

Persons specially appointed by the Indian Government to prosecute or defend for princes or chiefs shall be deemed to be the recognized agents of such princes or chiefs by whom all appearances, acts and applications may be made or done.

Execution of  
decrees of  
Courts of  
Native States.  
C. 434.

Execution of decrees of Courts of Native States may be obtained in the Small Cause Court, if the Governor-General in Council has declared by notification in the *Gazette of India* that such decrees may be executed, but not otherwise, and any such notification may be cancelled.

### **Suits by and against Corporations and Companies.**

Code 435—436.

Subscrip-  
tion and veri-  
fication of  
plaint.  
C. 435.

The plaint of a corporation or company, authorized to sue and be sued in the name of an officer or of a trustee, may be subscribed and verified by any director,

secretary or other principal officer of the corporation or company acquainted with the facts of the case.

Service of summons on a corporation or company may be made by leaving it at the Registered office of the corporation or company ; by sending it by post in a letter addressed to the officer or trustee at the office ; but if there be more offices than one, at the *principal* office in British India ; or by giving it to any director, secretary or other principal officer of the corporation or company.

Service on corporation or company. C. 436.

The Court may require the personal appearance of any director, secretary or other principal officer who may be able to answer material questions relating to the suit.

### **Suits by and against Trustees, Executors, and Administrators.**

Code 437—439.

In suits concerning property vested in a trustee, executor or administrator, when the contention is between the beneficiaries and a third person, the trustee, executor or administrator shall represent the beneficiaries, and ordinarily it shall not be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them to be made parties.

Beneficiaries in suits concerning trust-property. C. 437.

All executors and administrators must be joined as parties, except executors who have not proved their testator's will, and executors and administrators residing beyond the local limits of the jurisdiction of the Court.

Joinder of executors and administrators. C. 438.

The husband of a married administratrix or executrix need not be joined unless by order of the Court.

Husband of married executrix not to join. C. 439.



## Suits by and against Minors and Persons of Unsound Mind.

Code 440—464.

Minor to  
sue by next  
friend.  
Costs.  
C. 440.

Except as provided in s. 32 of Act XV of 1882, every suit by a minor must be instituted in the name of an adult person as next friend of the minor, who may be ordered to pay costs as if he were a plaintiff.

Applica-  
tions by next  
friend, &c.  
C. 441.

All applications in a suit must be made by the next friend or the guardian *ad litem* of the minor.

Guardian *ad*  
*litem*, C. 443.

The Court may appoint a guardian *ad litem* to ■ minor defendant.

Order ob-  
tained with-  
out next  
friend, &c.,  
may be dis-  
charged.  
Costs.  
C. 444.

Any order obtained by or on behalf of a minor without a next friend or guardian may be discharged, and if the Pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of the minority, he may be made to pay the costs.

Who may be  
next friend.  
C. 445.

Any person of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of the minor, and he is not a defendant in the suit.

Application  
for guardian  
*ad litem*.  
C. 456.

An order for the appointment of ■ guardian *ad litem* may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

When Court  
may ap-  
point.

If there is no person fit and willing to act as a guardian, the Court may appoint any of its own officers to be guardian, provided he has no interest adverse to that of the minor.

Who may  
be guardian  
*ad litem*.  
C. 457.

A co-defendant, if he has no interest adverse to that of the minor, may be appointed a guardian ; but neither a plaintiff or a married woman can be appointed.



No next friend or guardian is permitted to receive any sum of money or other thing before decree except with the leave of the Court, and on giving security that the money or thing shall be duly accounted for to, and held for the benefit of, the minor.

Next friend or guardian not to receive money without leave of Court. C. 461.

No next friend or guardian can enter into any agreement or compromise on behalf of the minor without the leave of the Court.

Or compromise suit. C. 462.

The foregoing provisions apply, *mutatis mutandis*, to the case of persons of unsound mind, adjudged to be so under Act XXXV of 1858.

Insane persons. C. 463.

These provisions do not apply to persons for whose person or property a guardian or manager has been appointed by the Court of Wards, or by any Civil Court under any local law.

Wards of Court. C. 464.

## Suits by and against Military Men.

Code 465—469.

Officers and soldiers who cannot obtain leave of absence may authorize any person to sue or defend on their behalf. The authority must be in writing, signed by the officer or soldier in the presence of his commanding officer, or the head or superior officer of the office in which the officer or soldier is employed.

Appearance by military men. C. 465.

The person so appointed may act personally or appoint a pleader.

Powers of persons appointed to act. C. 466.

Processes served on such agent or pleader shall be as effectual as if served on the officer or soldier personally.

Service in such cases. C. 467-68.

When a warrant of arrest or other process has to be executed within a cantonment, garrison, military station, or military bazar, the warrant or process must

Execution in cantonments. C. 469.

be delivered to the commanding officer. The commanding officer shall back the warrant or process with his signature, and in the case of ■ warrant of arrest, shall cause the person named in the warrant to be arrested and delivered to the officer charged with the execution.

---

### Interpleader.

Code 470—476.

Interpleader.

An interpleader suit under s. 470 of the Code is on a different footing from a claim to property attached in execution of a decree. Under the old practice, such claims were called interpleader suits, and are still popularly known as such. A claim to attached property under the present procedure is a summary proceeding under ss. 278 to 281 of the Code.

When Interpleader Suit may be instituted.  
C. 470.

When two or more persons claim adversely to one another the same payment or property from a mere stakeholder who is ready to render it to the right owner, the stakeholder may institute a suit of interpleader against the claimants, for the purpose of having it determined to whom the payment or property should be made or delivered, and of obtaining indemnity for himself.

Plaint.  
C. 471.

Section 471 sets out the particulars to be stated in the plaint.

Deposit of thing claimed in Court.  
C. 472.

The thing claimed may be paid into or placed in the custody of the Court.

Procedure & costs.  
C. 473-76.

The remaining sections deal with the procedure to be followed and the costs of the parties in such suits.

---

## Proceedings on Agreement of Parties.

Code 527—531.

Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing, stating a case for the opinion of the Court and agreeing to be bound by the decision of the Court.

Agreement to state case for Court's opinion.  
C. 527.

The value of the subject-matter must be stated in the case on which the costs are calculated as in ordinary cases. See also s. 20, Act XV of 1882.

Value of subject-matter to be stated.  
C. 528.

The matter is then heard and determined as an ordinary suit.

Procedure.  
C. 529-30.

## Summary Procedure on Negotiable Instruments.

Code 532—538.

A plaintiff, if he so desires, may proceed summarily under this chapter, upon a bill of exchange, hundi or promissory note, provided the suit is instituted within *six* months from the date when the instrument became due and payable. See Indian Limitation Act XV of 1877, second schedule, art. 5.

Institution of Suit. I. L. A. XV, 1877, 2nd sched., art. 5.  
C. 532.

The defendant in any such suit shall not be allowed to appear and defend, except with the leave of the Court first obtained.

If a defendant shows a good defence on the merits, the Court shall give him leave to appear and defend the suit.

Leave to defend.  
C. 533.

The Court may set aside a decree obtained under this chapter, and may stay execution, if it seems reasonable, on such terms as it thinks fit.

Power to set aside decree.  
C. 534.

Deposit of  
bill, &c.  
C. 535.

Costs of  
noting, &c.  
C. 536.

Procedure.  
C. 537.

Negotiable  
Instruments  
Act.

Ordinary  
procedure  
preferable.

The Court may order the instrument to be deposited in Court.

The holder of a dishonoured bill of exchange or promissory note has the same remedies for the recovery of the expenses of noting for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has for the recovery of the bill or note.

The procedure in other respects is the same as in an ordinary suit.

The Negotiable Instruments Act, XXVI of 1881, should be read in connection with this chapter (a).

The ordinary practice of the Court is so simple and summary in itself that the procedure under this chapter has only been resorted to in one or two instances in the course of six years, *i.e.*, since the Code of 1877 came into force. This procedure also is limited to cases in which the instrument is not more than six months over-due.

## Jurisdiction under Act IV of 1876 (B.C.)

### Rule 54. Apx. N.

Appeals and  
claims under  
Municipal  
Act.

Appeals  
against  
assessments.

Determina-  
tion of  
damages and  
expenses.

The Small Cause Court of Calcutta has also a jurisdiction conferred upon it by ss. 114, 216 and 353 of Act IV of 1876 of the Bengal Council.

Under s. 114, an appeal against any assessment made by the commissioners under Chapter V of the Act lies to the Small Cause Court.

Section 353 provides that where any damages, costs or expenses are by the Act directed to be paid, the amount and, if necessary, the apportionment of

---

(a) Chalmers ■ Negotiable Instruments.



the same, in case of dispute, shall be ascertained and determined by the Court of Small Causes.

When an appeal under s. 114 or a claim under s. 353 is preferred to the Small Cause Court, the appellant or claimant must file an application containing the particulars set out in Rule 54.

Application  
how made.  
R. 54.

Section 354 lays down the mode of proceeding in the Small Cause Court, and s. 355 provides for the execution of an order awarding damages, costs or expenses. See Appendix N.

Procedure.  
Apx. N.

If the question is only a dispute with regard to the *amount* of compensation for admitted damage caused by works executed under the Act, the Small Cause Court has jurisdiction to entertain and determine the matter; but if the dispute involves something more, if, for instance, the Commissioners deny their liability to compensate for damages done by the work, the proceeding before the Small Cause Court is inapplicable. *The Justices of the Peace for Calcutta v. The Oriental Gas Company (a)*. This case was decided on ss. 157 and 229 of Bengal Act VI of 1863, of which ss. 216 and 353 of the Act of 1876 are practically reproductions.

Jurisdiction  
of the Court.

The judgment of the Small Cause Court is final. No reference to the High Court or new trial in the Small Cause Court can be had from a judgment of the Small Cause Court Judge. In the case just mentioned, the High Court issued a *mandamus*, but that proceeding is no longer in existence. An injunction under the Specific Relief Act (*b*) takes the place of *mandamus* under the old practice.

Judgment  
of the Small  
Cause Court  
final. Specific  
Relief Act.

(a) 8 B. L. R., 433.

(b) Act I, 1877.



**Officers of the Court.***Act 13—15, 21, 33—36, 78—82, 96—97. Apx. A.*

Duties of, &  
penalties  
upon, officers  
of Court.

The Act provides for the appointment, removal, and duties of, and the penalties which may be imposed upon, officers of the Court. See ss. 13—15, 21, 33—36, 78—82, 96—97, and notes to these sections; and Appendix A.

---

**Miscellaneous.***Act 89—95. Code 640—51. R. 55—57. Apx. A.*

Miscellane-  
ous matters.

Miscellaneous matters and proceedings are provided for in ss. 89 to 95 of the Act, ss. 640 to 651 of the Code, Rules 55 to 57 of the Rules of Practice, and in Appendix A as regards Departmental matters.

Correspond-  
ence. R. 56.

No correspondence relating to suits or proceedings before the Court can be attended to, but any person having business in the Court or its offices shall transact the same in person, or by a duly authorized agent or pleader. In all other matters not relating directly to the conduct of suits, correspondence should be addressed to the Registrar of the Court.

---

**PART II.**  
**THE**  
**PRESIDENCY SMALL CAUSE COURTS ACT**  
**(XV OF 1882).**

—:0:—

*An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.*

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay ; It is hereby enacted as follows :— Preamble.

**CHAPTER I.**

**PRELIMINARY.**

1. This Act may be called “The Presidency Small Cause Courts Act, 1882”; and it shall come into force on the first day of July, 1882. Short title.  
Commence-  
ment.

But nothing herein contained shall affect the provisions of the Army Act, 1881, section 151, or the rights or liabilities of any person under any decree passed before that day.

SECTION 151 of the Army Act, 1881 (a), enacts:

(1) In India, all actions of debt and personal actions against persons subject to military law other than soldiers of the regular forces, within

---

(a) 44 and 45 Vict., cap. 58, s. 151.

the jurisdiction of any Court of Small Causes, shall be cognizable by such Court to the extent of its powers.

(2) All such actions, where the amount sued for exceeds 400 rupees, shall be cognizable by a Civil Court or Court of Small Causes only.

(3) A Civil Court or Court of Small Causes, upon adjusting payment of any ~~sum~~ by any person subject to military law other than a soldier of the regular forces, may either award execution thereof generally, or may direct specially that the amount named in the direction, being the whole or any part of the said sum, shall be paid by instalments or otherwise out of any pay or other public money payable to the debtor; and the amount named in the direction, not exceeding one-half of such pay and public money, shall, while the debtor is in India, be stopped and paid in conformity with the direction.

(4) In regard to award of execution generally, a Civil Court or Court of Small Causes shall proceed in accordance with the rules of procedure of such Court in India.

See also ss. 465–69 of the Code.

The “rights or liabilities” of any person under any decree passed under Act IX of 1850, or Act XXVI of 1864, which have been repealed by this Act (s. 2 and the first schedule), shall not be affected by this Act or by the Code of Civil Procedure as extended to the Presidency Small Cause Courts. The “rights or liabilities” arising under all decrees passed before 1st July 1882 shall remain and be of the same force and effect as if the Acts under which they had been passed and the rules of practice framed under these Acts had not been repealed. This, however, only applies to cases decreed or finally disposed of before 1st July 1882. Cases instituted before, but not heard till after, 1st July, will fall to be disposed of under this Act, the Code as extended to the Court and the rules of practice framed under s. 9 of this Act, but nothing required by this Act or by the Code to be done *before* a plaint is filed and which was not required to be done by the repealed Acts or Rules will be required under this Act or the Code ~~as~~ applied or the rules of practice.

A decree passed under the repealed Acts may be enforced under this Act and the Code as applied to the Court. This is not a question affecting the “rights and liabilities” of a judgment-debtor but a matter of procedure. The Act and Code give greater facilities for the recovery of decrees, and this procedure is applicable to decrees passed under the repealed Acts.

2. On and from the said day the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein.

But all Courts\* constituted, appointments made and securities given under any of the said enactments shall, so far as may be, be deemed to have been respectively constituted, made and given under this Act.

All references to any enactment hereby repealed made in Acts passed prior to the said day shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof. References in previous Acts.

\* THIS section repeals the previous Acts constituting the Presidency Small Cause Courts and the rules of practice framed under these Acts: but all "Courts constituted, appointments made and securities given" (by officers of the Court) are to be taken as constituted, made and given under this Act,—that is, continued as if this Act had not been passed.

The second paragraph relates to the Prisoners' Act, 1871, s. 14, the Legal Practitioners' Act, 1879, s. 3 (a) and such other existing Acts as refer to Act IX of 1850 and the other Acts repealed by this section and the first Schedule. All such references are to be read as if made to this Act.

3. In Act No. XXIII of 1850 (*for securing the Land-revenue of Calcutta*), section 3, for the word and figures "Act VII, 1847," the words and figures "The Presidency Small Cause Courts Act, 1882, Chapter VIII," shall be substituted; the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act," and "the said Commissioners," the words "the Judges of the Court of Small Causes at Calcutta" shall be substituted. Amendment of Acts.

In the Code of Civil Procedure, section 8, after the word and figures "Chapter XXXIX," the words

---

(a) Act V of 1871; Act XVIII of 1879.

and figures “and by the Presidency Small Cause Courts Act, 1882,” shall be inserted.

SECTION 3 of Act XXIII of 1850, ■ amended by this section, empowers the Collector of Calcutta to levy any assessment of land-revenue, not duly paid, by distress and sale of the goods and chattels of the owner, tenant or occupier of the land: and for that purpose he has all the powers conferred ■ the Judges of the Court of Small Causes of Calcutta by Chapter VIII of this Act.

The second paragraph in effect declares that no part of the Code of Civil Procedure shall apply to the Presidency Small Cause Courts, except so much as is extended by s. 8 of the Code and by the second schedule to this Act as modified and applied by the Judges of the Court with the sanction of the Local Government under s. 23 of this Act. See also para. 3 of s. 38 of the Act.

‘Small Cause Court’ defined.

4. In this Act, ‘the Small Cause Court’ means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

THIS Act does not apply to Mofussil Small Cause Courts. These Courts are governed by Act XI of 1865.

## CHAPTER II.

### CONSTITUTION AND OFFICERS OF THE COURT.

Courts of Small Causes established.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

THE style of the Court has been slightly altered by this section. By Act IX of 1850, s. 4, the Court was styled the “Calcutta Court of Small Causes.” In this section it is called the “Court of Small Causes of Calcutta.”

Court to be deemed under superintendence, &c., of High Court.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bom-



bay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts and within the meaning of the Code of Civil Procedure; and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

SEE Letters Patent (a) and *Firbhái Khimji v. Bombay-Baroda and Central India Railway Company* (b).

See also s. 25, Code of Civil Procedure.

7. Subject to the control of the Governor General in Council, the Local Government may, from time to time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts.

Appoint-  
ment, suspen-  
sion and re-  
moval of  
Judges.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

All barristers who when this Act comes into force are, or are acting as, Judges of the Small Cause Court shall, for the purposes of this section, be deemed to be advocates of a High Court.

THE present Judges have been reappointed under this section by a notification of the Local Government dated 28th June 1882 (c).

---

(a) Belchambers's Rules and Orders of the High Court, 38—61.

(b) ■ Bom. H. C. Rep., 59.

(c) *Calcutta Gazette*, 5th July 1882.

Rank and  
precedence  
of Judges.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

THE rank and precedence of the present Judges has been settled by a notification of the Local Government dated 28th June 1882 (a).

Power to  
make rules.

9. Except as otherwise provided by this or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for all matters not specially provided for by this Act, and for the exercise by one or more of its Judges of any powers conferred on the Small Cause Court by this Act or by any other law for the time being in force.

SEE the rules framed under this section, *post*. Rule 2 provides for the exercise by the Judges singly of all the judicial authority conferred on the Court by this Act or by any other law for the time being in force. This was a substantive provision under the old law (b).

See also Rule 57.

Chief Judge  
to distribute  
business of  
Court.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

THE Chief Judge distributes the judicial business of the Court, from time to time, amongst the Judges and Registrar, and provides by a general order for the transference of suits from one Bench to another (c).

Suits are transferred from ■■■ Court to another when ■ cross-suit is pending between the same parties ■ a suit between one of the parties and another party, where practically the same question has to be tried, or one plaintiff brings a number of suits against different defendants,

(a) *Calcutta Gazette*, 5th July 1882.

(b) Act IX of 1850, s. 23.

(c) Order dated 13th July 1882.

which have been distributed to different Benches, ■ for the convenience of the parties generally and the dispatch of business. In the ■ of cross-suits, or where there are several suits between the same or one of the parties and other parties, it is always desirable, and more convenient to the litigants, to bring all the ■ into one Court to be heard together.

It also avoids the possibility of conflicting decisions. The ordinary rule is, that the Bench before which the latest case has come takes the earliest case, but the consent of the Judge to whose file the transfer is asked should be first obtained.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or in his absence the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.
- Procedure in ■ of difference of opinion.

IT is otherwise provided by s. 69 of this Act, that where two or more Judges sitting together differ on any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, they shall refer the question upon which they differ for the opinion of the High Court irrespective of the amount or value of the suit.

This section read with ss. 37 and 69 avoids the necessity for ■ new trial, which previously existed (a), for the mere purpose of referring ■ question of law upon which the Judges may differ in opinion. But the question must be one falling within s. 69.

See notes to ■ 37 and 69.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.
- Seal to be used.

THE Local Government has prescribed the seal to be used by the Court (b).

(a) *Hall v. Joakim*, 12 B. L. R., 34.

(b) Bengal Government letter No. 2143J, dated 1st July 1882.

Appointment  
of Registrar  
and ministerial  
officers.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court ;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court, and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

Powers and  
duties of such  
officers.

The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature as the Chief Judge may, from time to time, by rule, direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed ; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

A REGISTRAR has been appointed by a notification of the Local Government, dated 28th June 1882 (a). The ministerial duties of the Registrar and other ministerial officers are prescribed by departmental orders made by the Chief Judge from time to time.

See Rules 4, 5, 6, 7 and 8.

Registrar may  
be invested  
with powers  
of a Judge in  
suits not ex-  
ceeding twenty  
rupees.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he

---

(a) *Calcutta Gazette*, 5th July 1882.



thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try

THE Registrar has been invested by the Local Government with the powers of ■ Judge for the trial of suits not exceeding Rs. 20 in value by ■ notification dated 28th June 1882 (a).

By ■ general rule, under the authority of the Chief Judge, any Judge of the Court may transfer from his own file to the file of the Registrar any suit not exceeding Rs. 20 in value which the Registrar is empowered to try (b).

See note to s. 10.

See also Rule 3.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Judge ■  
other officer  
not to prac-  
tise or trade.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian legislature.

IN furtherance of this section, an order has been issued that any officer of the Court ascertained to be concerned in any trade or profession shall be liable to instant dismissal (c).

Section 168 of the Indian Penal Code also enacts:—Whoever, being a public servant, and being legally bound, ■ such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for ■ term which may extend to one year, or with fine, or with both.

See s. 39, Presidency Magistrates' Act, 1877 (d).

(a) *Calcutta Gazette*, 5th July 1882.

(b) Order dated 13th July 1882.

(c) Order dated 4th August 1882.

(d) Act IV of 1877.



## CHAPTER III.

## LAW ADMINISTERED BY THE COURT.

Questions arising in suits, &c., under Act to be decided according to law administered by High Court.

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

THIS section has reference to questions of substantive law only, and not to questions relating to procedure or practice.

See note to s. 23.

## CHAPTER IV.

## JURISDICTION IN RESPECT OF SUITS.

Local limits of jurisdiction of Court.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

THE local limits of the ordinary civil jurisdiction of the High Court of Calcutta have been fixed by a proclamation issued by the Governor General in Council, dated 10th September 1794 (a). The old landmarks are hardly recognizable at the present day, many of them having disappeared; but there is seldom any difficulty in ascertaining whether the residence of a particular person is within or without the boundary line at any given place. Where any such question arises, it may generally be decided by enquiry at the local Police station or in the neighbourhood as to who receives the municipal rates and taxes of the locality where the premises are situated: whether the Calcutta or Suburban Municipality. There is a good map of Calcutta by Captain R. Smyth, R. E., published in 1854, which shows the boundaries of the town as set out in the Proclamation of 1794.

Suits in which Court has jurisdiction.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

---

(a) Appendix B.

when the amount or value of the subject-matter does not exceed two thousand rupees ; and

(a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit ; or

(b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business, or personally work for gain, within such local limits ; or

(c) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

*Explanation I.*—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

*Explanation II.*—Where a person has a permanent dwelling at one place and also ■ lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation III.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any

- cause of action arising at any place where it has also  
■ subordinate office, at such place.

THIS section, except cl. (a), corresponds to s. 17 of the Code of Civil Procedure. The distinction raised by cl. (a) is, however, ■ important one. The Small Cause Court is to have jurisdiction, if the cause of action has arisen "either wholly or in part" within the local limits. The words "or in part" have been omitted in the Code, and this has given rise to the objection (which for years has been much contested in England) that where the 'whole' cause of action has not arisen within the local limits, the Court has no jurisdiction. Numerous and conflicting decisions have been given on this point and on the cognate question, what constitutes the 'whole' cause of action. The leading English cases are *Jackson v. Spittal* and *Vaughan v. Weldon* (a). The difficulty so far ■ the Presidency Small Cause Court is concerned is avoided by the provision that the Court shall have jurisdiction if the cause of action has arisen "wholly or in part" within the local limits, provided the leave of the Court has been obtained, before the institution of the suit, in such cases (cl. (c) and Explan. II and III) as leave is necessary.

The language of the section differs also from s. 12 of the Charter of the High Court (b). There the words are:—"Either wholly or, *in case the leave of the Court shall have been first obtained*, in part." The omission of the words in italics from this section, ■ they occur in the section of the Charter, would seem to imply that leave is *only* necessary when the defendant actually resides outside the local limits and has not acquiesced in the institution of the suit or is non-resident in respect of a cause of action not arising within the local limits, and not in any other case. If, therefore, ■ defendant is actually and voluntarily residing, or carrying on business or personally working for gain within the local limits at the time of the institution of the suit, leave is not necessary if the cause of action has arisen "wholly or in part" within the local limits. The question under the 12th section of the Letters Patent has been exhaustively discussed and considered by the High Court of Madras in *DeSouza v. Coles* (c), where all the English cases have been examined.

Leave is in the discretion of the Court. By refusing leave, the plaintiff is not deprived of any *right*—for the right which he seeks to establish depends altogether upon the exercise of the Judge's discretion in his favour (c). An application for a new trial will not lie from an

---

(a) 5 L. R., C. P., 542; 10 L. R., C. P., 47; *Lalljee Lall v. Hardey Narain*, 9 I. L. R., Cal., 105.

(b) Belchambers's Rules and Orders of the High Court, 45.

(c) 3 Mad. H. C. R., 384.

order refusing leave. Such an application only lies from ■ decree or order in a *suit*. See s. 37. Here there is ■ *suit*, but only ■ application to institute one.

The general rule of law is, that a creditor should follow his debtor, in Scotch legal phraseology, *pursue* him; but there may be cases where it is more convenient, for various reasons, to try a suit in one Court instead of in another where both have jurisdiction. Practically, therefore, it resolves itself into a question of *convenience*. This no doubt raises the further question—Whose convenience? It is nearly always more convenient for a plaintiff to sue in his own jurisdiction, and it may be manifestly highly inconvenient to ■ defendant residing in the Punjab to have to defend ■ suit in Calcutta. But there may be cases where practically there is no defence, so that it is not of much consequence to the defendant where he is sued. All applications for leave are *ex parte*, and although *prima facie* a plaintiff may have an indisputable case, yet there may be ■ good defence, which a defendant at a distance may have great difficulty in proving except at considerable trouble and expense. It is consequently impossible to lay down any rule on the subject. Each case must be considered separately and on its own merits, and therefore the Legislature has left the matter to the discretion of the Court.

See s. 20 of the Code.

As to what is sufficient to create jurisdiction, see *Newcomb v. De Roos* (a). There the defendant who resided out of the jurisdiction ordered the plaintiff to do certain work; the letter was received and the work done by the plaintiff at S., within the district of L. Held, that the County Court of L. had jurisdiction. “The request of the defendant was not a complete request until received by the plaintiff at S.; the work, therefore, being done at S., in pursuance of the request made there, the whole cause of action arose there.” *Per Cockburn, C. J.* A residing at Lahore orders goods of B in Calcutta by letter. The request of A is complete when received by B. B, acting on the request, despatches the goods, which are at the risk of A. The price, in the absence of ■ contract to the contrary, is payable in Calcutta. The price is not paid, the ‘whole’ cause of action has arisen in Calcutta, and A may be sued in the Small Cause Court; but if he is residing outside the local limits, the leave of the Court is necessary.

A, in the case just mentioned, signs a promissory note for the price of the goods, at Lahore. The note is payable in Calcutta. The note is not paid. The cause of action has arisen in part at Lahore and in part at Calcutta. A may be sued on the note in the Small Cause Court of Calcutta; but if he is residing beyond the local limits, leave must be obtained

---

(a) 29 L. J., Q. B., 4.



Under cl. (b), if the defendant resides or carries on business or works for gain within the local limits, the Court has jurisdiction irrespective of the place where the cause of action arose and leave to sue is not necessary. *Residence* is the test of jurisdiction, but it is necessary in some cases (Explan. II and III) to ascertain where the cause of action arose for the purpose of fixing the residence in respect of such cause of action. Where the *whole* cause of action has arisen beyond the local limits, and the defendant is only *temporarily* lodging within the local limits, he is *non-resident* in respect of such cause of action (Explan. II).

A executes a promissory note to B at Lahore, payable at Lahore. The note has not been paid. The *whole* cause of action has arisen at Lahore. A comes to reside *temporarily* in Calcutta. A is *non-resident* in respect of this cause of action, and cannot be sued in Calcutta; but if a *part* of the cause of action has arisen in Calcutta,—i.e., if the note is payable in Calcutta and not at Lahore, he may be sued in the Small Cause Court with leave first obtained.

A Corporation or Company having its head office within the local limits may be sued in the Small Cause Court irrespective of the place where the cause of action arose. But if the Company has only a subordinate office within the local limits and the *whole* cause of action has arisen beyond such limits, the Company is *non-resident* in respect of such cause of action. If the cause of action has arisen wholly or partly within the local limits, the Company may be sued; but if *part* only of the cause of action has arisen, leave to sue must first be obtained (Explan. III).

A's goods are damaged by the East Indian Railway Company at Dinapore. The *whole* cause of action has arisen at Dinapore. The East Indian Railway Company has its principal office in Calcutta, the Company may be sued in Calcutta in respect of this cause of action.

A's goods are damaged at Barrackpore by a carrying Company with a subordinate office in Calcutta. A cannot sue in Calcutta; but if the damage has been caused partly at Calcutta and partly at Barrackpore, A may sue in Calcutta, but he must first obtain leave to do so.

As to the distinction between a permanent and temporary residence, see *Emritoll v. Kidd* (a).

In *The Queen v. The Judges of the Small Cause Court* (b), which is the case of a master of a ship, it was decided that a temporary residence within the local limits is sufficient to establish jurisdiction. Levinge, J., referring to that case in *Emritoll v. Kidd*, said:—But it must strike one at a glance that a captain of a ship's residence or dwelling differs materially from that of any other defendant. Of the captain of a ship it might be said, that his ship is his home, and wherever his ship was

(a) 2 Hyde, 117.

(b) 2 Taylor and Bell, 4.



there he would be said to dwell, although the sojourn of the ship in port be for ever ■ brief ■ period.

With regard to "carrying on business" and "working for gain" it has recently been held by the High Court of Calcutta under Act IX of 1850, following the English decisions, that an *actual and personal* "carrying on business" or "working" is necessary (a). The words of the section also are "*personally work for gain.*" It was also held in the same case that the objection that the defendant was not subject to the jurisdiction of the Court could be taken in an application for ■ new trial, although not put forward at the original trial (b).

Leave is necessary when the defendants or any of them reside beyond the local limits, if the defendants who reside outside do not acquiesce in the institution of the suit—a circumstance not likely to occur often.

*Explanation I.*—The set-off must be an *admitted set-off* (c). *A* has a claim against *B* for 3,000 rupees: *B* has ■ cross-claim for 1,000 rupees, which cross-claim *A* admits. *A* and *B* agree that *B*'s claim of 1,000 rupees shall be set-off, in part, against *A*'s claim. *A* may, before bringing his suit, give *B* credit for 1,000 rupees, and sue for the balance 2,000 rupees. But he cannot give *B* credit, in a particular account, arising out of a *different* transaction against *B*'s will, for the mere purpose of bringing a suit in the Small Cause Court.

*A* claims from *B* 3,000 rupees as damages for breach of a contract, or for the price of goods. *A* owes *B*, 1,000 rupees on a promissory note or on some other account. *A* may admit *B*'s claim, but he cannot pay off *B*. by giving him credit for the debt in a disputed account with *B* and sue for the balance, unless *B* consents to such an arrangement. If *A* were to say to *B*, I have a claim against you for 3,000 rupees, and I owe you 1,000 rupees, for which I will give you credit, and as you dispute my claim I will put you into Court for the balance, so that the matter may be settled, and *B* assented, *A* could set-off the 1,000 rupees due to *B* before coming into Court. But if *B* said, I dispute your claim and I object to your setting off my 1,000 rupees against your claim, *A* would not be permitted to set it off, or if *B* merely replied, I dispute your claim, *A* would not upon that be justified in setting-off his debt to *B* against his claim upon *B*.

(a) *Chundee Churn Dutt v. Eduljee Cowasjee Bijnee*, 8 I. L. R., Cal., 688; *Subboraya Mudali v. The Government of Madras and Cunliffe*, 1 Mad. H. C. R., 286; *Mitchell v. Hender*, 23 L. J., Q. B., 273; *Craven v. Bracas*, G. R. I, Vol. I, 89.

(b) *Chowdhry Wahid Ali v. Mullick Inayet Ali*, 6 B. L. R., 52; *Shaikh Jan Ali v. Khonkar Abdur Kuhma*, *ib.*, 52; *Motilal Ramdas v. Jannadas Janardas*, ■ Bom. H. C. R., 40; *Jones v. Owen*, 5 D. and L., 669.

(c) 19 and 20 Vic., cap. 108, s. 24.

In the 25th section of Act IX of 1850 the words used are "balance of account" (a). The words occur in the County Courts Act (b) : and it has been held that it must be a balance *mutually settled and agreed upon between the parties*, or a balance due after giving credit for payments or something equivalent to payment (c). In another case (d) it was held, that "balance of account" meant "after payment of part or after the allowance of a set-off as an item in account, with the agreement of the parties, which is equivalent to the payment of part and not when the plaintiff claims more than £20 and seeks to reduce it by giving defendant credit for a simple set-off."

In the County Courts Amendment Act (e) the words "admitted set-off" have been substituted for "balance of account," thereby giving legislative effect to the English decisions just mentioned. The Indian legislature has in this section adopted the still more explicit expression,—"*Admitted by both parties.*"

There is, however, a class of cases where a plaintiff may give credit for sums received without a special authority from the defendant.

In the case of *Ewart Latham & Co. v. Haulji Mahomed Siddik* (f) the plaintiffs had advanced Rs. 15,000 to the defendant on a cargo of grain to Hong-Kong. The grain was sold at a loss. The plaintiffs gave credit in account for the sale-proceeds and brought an action in the Small Cause Court of Bombay for a balance of Rs. 1,000 abandoning an excess:—*Held* by the High Court, on a reference, that the parties were bound by the nature of the transaction, and that the plaintiffs had rightly given credit for the sale-proceeds received at Hong-Kong.

Where a contract for the sale and delivery of 2,000 *borás* of stone contained a provision that in case of breach by the purchaser, liquidated damages were to be paid by him at the rate of Re. 1 per *borá*, and the purchaser paid Rs. 1,000 deposit, but made default in accepting the stone:—*Held*, that the plaintiff's proper course was to apply the Rs. 1,000 (held a deposit) in reduction of the liquidated damages and sue for the balance Rs. 1,000 only (g).

These decisions proceed upon the principle that the credits given in account are in pursuance of the contract and of the understanding between the parties. It is of the very nature of the contract that the defendant should receive credit for such payment: they cannot therefore be said to be credits in the nature of payments made *against his will*: or allowed for the mere purpose of bringing the suit within the jurisdiction of the Court.

(a) Act IX of 1850, s. 25.

(b) 9 and 10 Vict., cap. 95, s. 58.

(c) *Woodhams v. Newman*, 7 C. B., 654.

(d) *Avards v. Rhodes*, 22 L. J., Exch.,

(e) 19 and 20 Vict., cap. 108, s. 24.

(f) 4 Bom. H. C. R., O. C. J., 133.

(g) *Mehertanji Maucharji v. Punja*

*Velji*, 5 Bom. H. C. R., O. C. J., 147.

In another case—*Hásam Kásam v. Gomá Jádavji* (a)—the plaintiff had borrowed money from the defendant on a pledge of ornaments. The defendant refused to deliver up the ornaments, although the amount due to him had been tendered by the plaintiff. In an action of damages for the detention and conversion of the ornaments, it was held, that the measure of damages is the value of the ornaments less the sum for which they have been pledged. "The damages are to be measured by the amount of the loss actually sustained by the plaintiff": and "what the plaintiff had a right to recover was, the value of his ornaments less the claim which the defendant had against him in respect of them." The plaintiff had, therefore, rightly credited the defendant with the sum due to him and brought his action for the balance.

It is not necessary that actual money should be paid: an equivalent has the same effect. "Where anything is received upon agreement in reduction of a debt, that is a payment sufficient to take the debt out of the statute of limitations (b). It may be a payment in goods: "it may be in money or money's worth" (c).

It has been held in Calcutta under Act IX of 1850, that a suit to recover the first instalment due on a bond for 2,000 rupees would not lie in the Small Cause Court, where the whole debt and the bond were denied. But where a bond containing a penalty of 50,000 rupees and other conditions was not in dispute, and all that the plaintiff sought was a money-decree for a sum not exceeding the pecuniary limit of the Court's jurisdiction, it was held, that the Court had jurisdiction, although the defendant might have an action for specific performance of the unfulfilled conditions against the plaintiff, and that the non-performance of these covenants by the plaintiff was no defence, legal or equitable, to an action on the bond (d).

The balance of a debt, the whole being originally beyond the pecuniary limit of the Small Cause Court and reduced by payments to a sum within the money limit, may be sued for (e).

By s. 50 of the Code of Civil Procedure, cl. (f), a set-off, if allowed by the plaintiff, must be stated in the plaint.

If a plaintiff has abandoned or relinquished any portion of his claim, this must also appear on the plaint: s. 50 of the Code.

A defendant may plead a set-off to the claim of the plaintiff, but the amount claimed to be set-off must not exceed the pecuniary limit of

---

(a) 5 Bom. H. C. R., O. C. J., 140.

(b) *Huper v. Stevens*, 4 Ad. and El., 71.

(c) *Cannan v. Wood*, 2 M. and W., 465; *Hills v. Mesnard*, 16 L. J., Q. B., 306.

(d) *Smith v. Sims*, G. R., Part I, Vol. I, 145.

the Court's jurisdiction, and the defendant cannot reduce the claim by abandoning an excess. See s. 111 of the Code and Rule 28.

*Explanation II.*—A temporary residence within the local limits is sufficient in respect of any cause of action which has arisen "either wholly or in part" within such limits. But if the cause of action has arisen in part outside the local jurisdiction, leave to sue must *first* be obtained. See note to cl. (b), *ante*.

*Explanation III.*—It has been held in England, that a trading corporation 'dwells' at its principal office where it carries on business (a). In suits against the Government the cause of action must have arisen within the local limits of the Court (b).

It is further provided in this Explanation that a "Corporation or Company" shall be deemed to carry on business where it has a subordinate office in respect of any cause of action arising at any such place,—i. e., if the Corporation or Company has a subordinate office in Calcutta and the 'whole' cause of action has arisen in Calcutta, the Corporation or Company may be sued in the Calcutta Small Cause Court in respect of such cause of action. If the cause of action has arisen beyond the local limits, the Company cannot be sued in Calcutta; but if it has arisen partly within and partly without the jurisdiction, a suit may be brought in Calcutta with leave first obtained. See note to cl. (b), *ante*.

The result of this section, cls. (a) and (c) and Explan. II and III, is that the leave of the Court to the institution of a suit must be obtained;—

(1) When the defendant or (where there is more than one defendant) any defendant resides beyond the local limits and does not carry on business or personally work for gain within such limits and has not acquiesced in the institution of the suit.

(2) When the defendant is *temporarily* residing within the local limits and part of the cause of action has arisen outside such limits.

(3) Where the defendant is a Corporation or Company with a subordinate office within the local limits, but the cause of action has arisen in part beyond such limits.

As to the practice in applying for leave see Rules 38, 39 and 43.

The construction placed upon this section and Explan. II and III appears to be reasonable; particularly if the expression "cause of action" used in the Explanations is intended to mean the 'whole' cause of action and not merely a *part*; for it would seem to be the intention, having regard to cl. (a), that leave should be obtained in the case of

(a) *Shiel v. Great Northern Ry. Coy.*, ■ L. J., Q. B., 331; *Brown v. The L. & N. W. Ry. Coy.*, 32 L. J., Q. B., 318.

(b) *Subharaya Mudali v. The Government of Madras and Cunliffe*, 1 Mad. H. C. R., 286.



all non-resident defendants; but this is again qualified by Explan. II and III, which declare what shall be ■ sufficient residence when the "cause of action," i.e., the "whole" ■ of action, arises within the local limits. Leave in that case would not ■ to be necessary; but where a *part* only of the cause of action arises within the local limits, the Explanations will not apply: the defendant is *non-resident* and leave must be obtained as in the case of all other *non-resident* defendants.

By s. 36 of Act IX of 1850 (a) a plaintiff having any demand, whether founded on contract or wrong, against two or more persons jointly answerable, could elect to sue any of such persons and might obtain judgment and execution against the person or persons sued, notwithstanding that others jointly liable may not have been served or sued or may not have been within the jurisdiction of the Court. There is no similar provision in this Act, but as regards matters of contract, s. 43 of the Indian Contract Act (b) provides that when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one of such joint promisors to perform the whole of the promise: and one of the illustrations is, *A, B and C* jointly promise to pay *D* 3,000 rupees. *D* may compel either *A, B, or C* to pay him 3,000 rupees.

For common forms of causes of action and plaints see Appendix (c).

19. The Small Cause Court shall have no jurisdiction in—

Suits in which Court has no jurisdiction.

(a) suits concerning the assessment or collection of the revenue;

(b) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

■ (c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judg-



ment or order of any Court or any such Judge or judicial officer ;

(*d*) suits for the recovery of immoveable property ;

(*e*) suits for the partition of immoveable property ;

(*f*) suits for the foreclosure or redemption of mortgage of immoveable property ;

(*g*) suits for the determination of any other right to or interest in immoveable property ;

(*h*) suits for the specific performance or rescission of contracts ;

(*i*) suits to obtain an injunction ;

(*j*) suits for the cancellation or rectification of instruments ;

(*k*) suits to enforce a trust ;

(*l*) suits for a general average loss and suits on policies of insurance on sea-going vessels ;

(*m*) suits for compensation in respect of collisions on the high seas ;

(*n*) suits for compensation for the infringement of a patent, copyright or trademark ;

(*o*) suits for a dissolution of partnership or for an account of partnership-transactions ;

(*p*) suits for an account of property and its due administration under the decree of the Court ;

(*q*) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage ;

(*r*) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce ;

(*s*) suits for declaratory decrees ;

(*t*) suits for possession of hereditary office ;

(*u*) suits against Sovereign Princes or Ruling

(v) suits on any judgment of a High Court ;

**THIS section declares in what suits the Small Cause Court shall have no jurisdiction :—**

(d) excludes suits for the recovery of immovable property. Under the section of Act IX of 1850 (b), which gave general jurisdiction to the Small Cause Courts, it was held in Calcutta (c), that the Courts could try suits involving title to immovable property and for recovering possession of immovable property where the value of the property in dispute did not exceed Rs. 500. In Bombay it has been held that the jurisdiction extended to suits where the value of the property did not exceed Rs. 1,000 (d). This jurisdiction has now been taken away.

(c) excludes suits for a dissolution of partnership or for an account of partnership-transactions. The Small Cause Court never had jurisdiction to try suits for a dissolution of partnership, but it was held under Act IX of 1850 (e) that it had power to entertain suits for a balance of a partnership account, and that although the accounts had not been actually taken or a balance ascertained and mutually

(b) Act IX of 1850, s. 25.

(d) *Walji Karinaji v. Jagonath Premji*, 2 I. L. R., Bom., 84; *Nowla Ooma v. Bala Dhuramji*, ib., 94.

agreed upon (a). In other words, that it had power to go into an account of "partnership-transactions" where the amount claimed did not exceed the pecuniary limit. This jurisdiction has been taken away.

Where, however, an account has been stated between partners, and a balance arrived at and fixed by mutual agreement as due and payable by one partner to another, a suit will still lie for that balance; but the cause of action would be the account stated and mutually agreed upon. The plaintiff would have to prove the stated account and mutual agreement. The Court cannot go beyond that and enquire into disputed items or into any of the "partnership-transactions."

(q) excludes suits for "malicious prosecution." Under the repealed Acts the Small Cause Court had jurisdiction in such cases.

(v) corresponds to s. 27 of the County Courts Amendment Act (b).

(w) excludes suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force. Under the repealed Acts a suit upon a judgment of the Small Cause Court was cognizable by that Court (c). Section 94 of this Act declares that no suit shall lie on any decree of the Small Cause Court.

The other classes of cases mentioned in this section were always beyond the jurisdiction of the Small Cause Court.

Court may by consent try suits beyond pecuniary limits of jurisdiction.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

THE jurisdiction given by this section does not include cases expressly excluded by s. 19. It is only in cases where the Court

(a) *Shearman v. Roberts*, G. R., Part I, Vol. I, 75; *Ramkissen Rawutmull v. Ramdhone Chunduck*, S. C. C. Ref., 8th September 1881.

(b) 19 and 20 Vict., cap. 108, s. 27.

(c) *Jussorut Khan v. Kanye Lall Dey*, S. C. C. Ref., 1866.

would have jurisdiction, if the "amount or value" did not exceed 2,000 rupees, under s. 18, that by agreement of parties, *before suit brought*, it may try suits beyond the pecuniary limit. The agreement must be in writing and must be filed with the plaint.

If the Court has not jurisdiction over the subject-matter of a suit, the consent of the parties will not give jurisdiction (a). And where a defendant did not dwell or carry ■ business or work for gain within the district, but waived all objections to the jurisdiction, it was held that the Court had no jurisdiction (b). The point was stated in a recent reference to the High Court of Calcutta and the principle ■ not dissented from, although the particular case was decided on another ground (c).

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

Suits by and against officers of Court.

SEE s. 19 (c).

Section 21 corresponds in effect to s. 100 of Act IX of 1850 and to s. 128 of the County Courts Act (d), and is intended to guard against any "suspicion of justice,"—*per* Erle, J., in *Munn v. Buckerfield* (e). It was held in that case, the Bailiff not having availed himself of the provision regarding interpleaders and having taken upon himself to proceed to a sale and payment over of the proceeds, that the section applied. But the acceptance of costs under a Judge's order, which otherwise would not have been payable, is a waiver of any objection to the order on the ground of want of jurisdiction (f).

The system of interpleader, as it existed under the repealed Acts in the Small Cause Court, is done away with, except as regards distrained property, under s. 61 of this Act. Claims and objections to property attached in execution of decree or before judgment, must be preferred under ss. 278 or 487 of the Code of Civil Procedure; and if the officer, in any case, has notice of the claim, he should not sell the goods or pay over the proceeds till the claim is decided.

(a) *Jones v. Owen*, 5 D. & L., 667; *The Govt. of Bombay v. Ramnall Sinji Amarsinji*, 9 Bombay H. C. R., 242.

(b) *Price v. Ramgopal Banerjee*, 6th December 1853; *Temple's Practice*, 29.

(c) *Chundee Churn Dutt v. Edulji Cowasji Bijnee*, ■ L. L. R., Cal., 674.

(d) Act IX of 1850, s. 100; 9 and 10 Vict., cap. 95, 128.

(e) *Broom's County Court Practice*, 79.

(f) *Tinkler v. Hilder*, 4 Exch., 187.



The section does not apply to any of the offences referred to in ■ 78, 79 and 80 of this Act for which these sections provide a summary remedy.

It applies to cases where a Judge *knowingly* acts without jurisdiction, or ■ officer of the Court, ■ *such, i. e.*, under color of the process of the Court, does an illegal or tortuous act of which the plaintiff complains. Every officer who acts "in pursuance" of the law is protected. The words in the corresponding section of Act IX of 1850 are "in pursuance of this Act" (a). The same words occur in ■ number of English statutes: "the object of the clause in question was to give protection to all parties who *honestly* pursued the statute. A party is protected if he acts *bonâ fide* and in the reasonable belief that he is pursuing the Act of Parliament." *Per* Pollock, C. B. (b). In *Bath v. Clive* (c) it was said by Cresswell, J., "if reasonably meant anything else than in good faith it meant according to his reason ■ contra-distinguished from caprice. Did the defendant try the case honestly, believing that his duty as Judge under the County Courts Act called upon him to do so." See also *Lawson v. Dumlin* (d).

See also Broughton's Code of Civil Procedure, 23—27.

Under Act IX of 1850 (e) it was provided that all prosecutions should be commenced within three calendar months after the fact committed and not afterwards, and that notice in writing of such action and of the cause thereof should be given to the defendant one calendar month at least before the commencement of the action. This Act, s. 97, contains the first of these provisions; and s. 424 of the Civil Procedure Code enacts that no suit shall be instituted against any public officer in respect of an act purporting to be done by him in his official capacity until the expiration of two months next after notice in writing has been served upon him. It has been held that where ■ Bailiff of the County Court acted *bonâ fide*, the circumstance of having taken an indemnity from the execution-creditor did not disentitle him to notice of action (f)—See also *Joule v. Tayler* (g).

By the second schedule to the Limitation Act (h), the period allowed for bringing ■ suit "for compensation for doing or omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India" is limited to ninety days from the time when the act or omission takes place.

See also s. 97.

As to amends see s. 96 and *Paor v. Lillicrop* (i).

(a) Act IX of 1850, s. 111.

(e) Act IX of 1850, s. 111.

(b) *Hughes v. Buckland*, 15 M. and W., 346.

(f) *White v. Morris*, 11 C. B., 1015.

(g) 7 Exch. 58.

(c) 10 C. B., 827.

(h) Act XV of 1877, art. 2, sched. ii.

(d) 9 C. B., 54.

(i) 32 L. J., Exch., 105; *Boulding v. Tyler*, 32 L. J., Q. B., 85.



22. If any suit cognizable by the Small Cause Court, other than a suit to which section twenty-one applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit, a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

Costs when plaintiff sues in High Court, in other cases cognizable by Small Cause Court.

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

THIS section does not apply to suits brought under s. 21. It corresponds to s. 101 of Act IX of 1850, with this difference that the limit is raised from 100 rupees to 300 rupees in respect of "any other suit" not founded on contract. As to the distinction between contract and tort see *Legge v. Tucker* (a). As regards a plaintiff's right to costs, the question has been decided in two cases in the High Court of Calcutta (b). The last clause of the section, however, provides that the Judge who tries the case may certify that it was a fit one to be brought in the High Court, in which event costs will be allowed.

## CHAPTER V.

### PROCEDURE IN SUITS.

23. The portions of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed

Portions of Civil Procedure Code extending to the Court.

(a) 26 L. J., Exch., 71; *Williamson v. Allison*, 2 East, 452; *Broom's Com.*, 677, *et seq.*

(b) *Harran Chunder Gangooly v. Shib Chunder Mitter*, 2 Hyde's Rep., 237; *Sikurchand v. Sooringmull*, 1 Hyde's Rep., 272.

thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act :

Provided that the Court may, subject to the control of the Local Government, from time to time, by notification in the official Gazette, declare that any of the said portions of the said Code shall not extend and be applied to the Small Cause Court, or that any of such portions shall so extend and be applied with such modifications ■ the Court, subject to the control aforesaid, may think fit.

THIS section extends to the Presidency Small Cause Courts the portions of the Code of Civil Procedure set out in the second schedule and not extended by the Code itself to these Courts. The sections extended by the Code and not inserted in the schedule are ss. 3, 8, 25, 86, 223, 225, 386 and Chapter XXXIX. The second paragraph of the section, however, empowers the Judges of the Court to omit and modify any portions of the Code subject to the control of the Local Government. Under the power thus conferred, some sections entered in the schedule as extended have been omitted and some others have been modified. These omissions and modifications are set out in the Notifications of the Judges dated 14th June 1882 and 21st March 1883 (a), and for the Code itself as extended and applied in Calcutta see *post*.

The Code thus extended is the procedure of the Court. "The Court has in its judgment," and with the consent of the Local Government, declared by these omissions and modifications how far the same shall be applicable. Act IX of 1850 (b) contained ■ somewhat similar provision. For matters of practice not specially provided for by the Act or Rules, the general principles of practice in the High Court might be adopted and applied "at the discretion of the Judges."

24. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

UNLESS required by the Court no written statement need be filed ; but the section contemplates that the Court may require written

No written statement except in cases of set-off

(a) *Calcutta Gazette*, 14th June 1882 and 21st March 1883.

(b) Act IX of 1850, s. 41.

statements, and, ■ 114 to 116 of the Code of Civil Procedure, relating to written statements, have been extended to the Court. The Court is to decide in any particular case whether it will call for written statements or not. When it has decided to call for them, the order should be made on the plaint and a day fixed for filing them. They must be drawn up in accordance with the provisions of ■ 114 and 115 of the Code.

A defendant's written statement should contain his answer to the plaint, and state any new matter on which he intends to rely at the hearing.

Written statements, whether of plaintiff or defendant, should be ■ brief ■ the nature of the case will admit, and should not be argumentative, but should be confined, ■ much as possible, to a simple narrative of the facts which the party, by whom, or on whose behalf, the written statement is made, believes to be material to the case, and which he believes he will be able to prove if called upon by the Court.

In the High Court, ■ plaintiff is not required to file a written statement except on the application of ■ defendant supported by affidavit, but the section of the Act leaves it in the discretion of the Court.

When only the defendant is required to file ■ written statement, the plaintiff shall be entitled, immediately on the ■ being filed, to obtain an office copy thereof.

When both the plaintiff and the defendant are required to file written statements, either party, *after filing his ■ written statement*, shall be entitled to obtain an office copy of the statement of the other party.

When two or more defendants are required to file written statements, ■ defendant, *after filing his own written statement*, shall be entitled to obtain an office copy of the statement of a co-defendant.

These Rules (a) may safely be acted upon in all cases in which written statements are called for by the Court.

25. When a period of eight days from the decision of ■ suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether ■ party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the

Return of documents admitted in evidence.

---

(a) Rules 225, 226, 233, 239, 240, 241, Belchambers's Rules and Orders of the High Court, pp. 141, 143.

record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same :

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct : Provided also that no document shall be returned which by force of the decree has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

THIS section provides for the return of documents which have not been impounded under s. 143 of the Civil Procedure Code or rendered void or useless by force of the decree. Section 143 of the Code empowers the Court to impound any document or book produced before it "if it sees sufficient cause." A document has become void or useless by force of a decree when it can no longer be sued upon. For instance, a promissory note is void after a decree has been passed upon it. Vouchers filed in support of a claim are useless when the claim is decreed. Such documents are not to be returned, but if they are required afterwards for any special purpose, such as evidence in some other suit or matter or in a criminal prosecution, the Clerk of the Court should be subpoenaed to produce them at the proper time and place.

Documents which may be returned are ordinarily retained for eight days, when they may be taken away. This is to allow for the period within which a new trial may be applied for. If a new trial is applied for within the time, the documents must remain in Court till the application is disposed of or the suit is finally terminated.

It constantly happens that documents are of such a character, such as current cash and account books and papers in use, that their retention in Court for any time would be a serious inconvenience to the parties producing them, and therefore it is provided that such documents may be returned at once on such terms as the Court may direct. The terms are an undertaking to produce them when called upon in the event of their being again required. A book is kept by each of the Bench Clerks in which a receipt for documents returned must be given. A similar receipt book is kept in the Record office in which all other documents returned are entered.



26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain ■ decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum ■ it thinks fit.

Compensation payable by plaintiff to defendant in certain

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And when any claim or objection is allowed, the Court may award such compensation by way of damages to the claimant or objector ■ it thinks fit; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made ■ if it were a decree of the Court.

THESE are new provisions. The first paragraph provides for compensation to ■ defendant who is sued unnecessarily or for a larger sum than the plaintiff is entitled to, and which smaller sum, if demanded out of Court before action brought, would have been paid, or where such sum has been tendered before action brought.

The second paragraph enables the Court to give compensation to a decree-holder or judgment-debtor, or to both, when a claim or objection, preferred under s. 278 of the Code to property taken in execution of ■ decree, is disallowed.



The third paragraph allows compensation "by way of damages" to ■ successful claimant or objector whose property has been wrongly taken in execution of a decree: and any order made under this clause ■ awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment." This clause corresponds to s. 62 of this Act, relating to claims to distrained goods, which ■ a part of the Distress Act (a). Under the repealed Small Cause Court Acts ■ successful claimant nearly always filed ■ suit for damages for the wrongful seizure, and the whole question had to be tried over again often before another Judge unacquainted with the facts of the original suit, and such cases were often speculative. This ■ provision puts an end to these suits and enables the Court, at a time when it has all the facts before it, to decide finally ■ the whole matter.

All orders for the payment of money made under this section may be enforced like ■ decree by the issue of execution against the person or property of the party ordered to make the payment.

Where an order in favor of a defendant has been made under the first clause and the plaintiff at the same time has recovered ■ decree against the defendant for a sum less than the amount claimed, the one order may be set off against the other and execution will issue for the balance only, if any.

Decree-holder to accompany officer executing warrant.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

THIS section enacts an old rule of the Court. The same practice prevails with regard to the service of summonses and other processes. See Rule 19.

Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy

---

(a) Act I of 1875, s. 15.

lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

THIS is popularly known in Calcutta as the Tiled Hut Section. It was the practice originally to seize and sell tiled huts in execution of decrees of the Court. The High Court of Calcutta in 1873 (a) decided that they could not be taken in execution of Small Cause Court decrees, and from that time the practice ceased. This section enables the Court to deal with them as 'moveable' property. It however goes further and provides that 'anything' attached to immoveable property and which the tenant might, before the termination of the tenancy, lawfully remove without the permission of the landlord, may be taken in execution of a Small Cause Court decree. Thus, mills, machinery and tenant's fixtures may be attached; but the purchaser shall not be allowed to remove the property until he has done to the land or building whatever the judgment-debtor would have been bound to do if he had removed the hut, machinery or other fixture.

As to tenant's fixtures,—

"Things which a tenant has fixed to the freehold for the purposes of trade or manufacture may be taken away by him whenever the removal is not contrary to any prevailing practice where the articles can be removed without causing material injury to the estate; and where in themselves they were of a perfect chattel nature before they were put up, or at least have in substance that character independently of their union with the soil,—or in other words, where they may be removed without being entirely demolished or losing their essential character or value" (b). See also *Parbutty Beweh v. Woomutara Dabee* (c).

Unless the property belongs exclusively to the judgment-debtor, it may be released from attachment if the Court thinks fit. Section 280 of the Code of Civil Procedure provides that where the property attached is in possession of the judgment-debtor, "not on his own account ■

(a) *Kallypersaud Sing v. Hoolas Chand*, 10 B. L. R., 448.

(b) *Woodfall's Landlord and Tenant*, 6th Ed., 466.

(c) 14 B. L. R., 201.

■ his ■ property, but ■ account of, ■ in trust for, some other person, or partly on his ■ account and partly on account of some other person, the Court shall pass an order for releasing the property wholly or to such extent as it thinks fit from attachment."

In the case of a tiled hut and similar property, it is of such ■ nature that it cannot be divided and a portion sold and a portion released, even if the shares of the different persons should be ascertained, and the Small Cause Court has not the machinery for putting ■ purchaser of ■ mere share in possession as a joint owner with other persons jointly interested. It is difficult, therefore, in the Small Cause Court to deal merely with the right, title and interest of the judgment-debtor by putting the same up to auction, and it may reasonably be supposed that the Legislature in enacting this section only intended to put such property on the same footing as chattel property, where the entire chattel should be sold and delivered and nothing else. At all events the Court has a discretionary power in the matter.

The judgment-debtor must be the tenant of the property on which the fixture stands. If he has been ejected, or from any cause has ceased to be a tenant at the time of the attachment, the attachment is bad and must be removed. A case of this kind occurred shortly after the passing of the Act.—*Muldunmohun Chatterjee v. Chunderhanto Mookerjee* (a).

The judgment-debtor had been ejected some time before the attachment and had left the hut standing on the land. The landlord filed ■ claim, alleging that the hut had been left by the tenant in satisfaction of a claim for rent. A Bench of two Judges held that the landlord had such an interest in the hut as entitled him to have it released, and the judgment-debtor was not at the time of the attachment the tenant of the land on which the hut stood.

A distress for rent will not lie on property under this section. See note to s. 67.

Discharge of judgment-debtor ■ sufficient security.

29. Whenever any judgment-debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released.

THIS section enables the Court to release the person or property of a judgment-debtor taken in execution of ■ decree. The provision

(a) D. 5, 68, 2nd September, 1882.

with regard to property is new. The security required is a Bond with or without sureties for the payment of the decree by ■ certain time or by instalments. The Bond requires to be stamped (a), and the parties must sign at the same time ■ warrant to confess judgment in the event of failure to perform the conditions of the Bond.

See Rule 55.

The Bond is made to the plaintiff or to the decree-holder, ■ the case may be, and covenants for the payment of the debt and costs in the manner agreed upon or ordered by the Court. On failure to pay, the plaintiff or decree-holder applies to the Court, to enter up judgment on the Bond and for the issue of execution.

An application for instalments must be made within *six months* from the date of the original decree and not afterwards (b).

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms ■ it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit.

Court may in certain ■ suspend execution of decree.

THIS section enables the Court to suspend execution or discharge a debtor who is *temporarily* disabled by sickness, poverty or other ■ sufficient cause" from paying the amount of a decree. It empowers the Court to give time, and to discharge the debtor from custody, but not to release him absolutely from his liability under the decree.

Such ■ order should not be made without notice to the plaintiff or decree-holder. If he is in Court when the application is made, that is ■ sufficient notice. The period of suspension should in all cases be fixed and entered on the record. If within the time so fixed the decree is not satisfied, execution may again issue; but if the debtor has undergone imprisonment, he cannot be again imprisoned, but execution may issue against his moveable property.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient

Execution of ■ decree of Small Cause Court by other Courts.

(a) Indian Stamp Act, I of 1879, art. 13, sched. i, and Appendix H.

(b) Indian Limitation Act, XV of 1877, art. 175, sched. ii, 2nd divn.



to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immoveable property situate within such local limits—to the High Court ;

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

Procedure  
when decree  
transferred.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

WHEN a judgment-debtor has no moveable property within the local limits sufficient to meet a decree of the Small Cause Court, the decree-holder may have execution against his immoveable property ; but he must first exhaust his remedy against the debtor's moveable property. If the immoveable property is situated within the local limits, the decree must be taken to the High Court : if outside, to any Civil Court having jurisdiction.

A copy of the decree is given to the applicant along with a certificate setting forth that satisfaction has not been obtained by execution, or where the decree has been executed in part, the extent to which satisfaction has been obtained and what sum remains due under the decree. See Appendix (a).

The fee for a certified copy of decree is the same ■ for a warrant. See Fourth Schedule, col. 4.

Under the repealed Acts immoveable property could not be taken in execution of ■ Small Cause Court decree, and to effect this object it was the practice to institute a suit in the High Court on the unsatisfied judgment of the Small Cause Court, until ■ recent date when the High Court of Calcutta held that such ■ suit would not lie (b). It had always been the practice, however, in Bombay (c).

The question has been raised—whether under an unsatisfied decree passed under the repealed Acts immoveable property may be taken ?

(a) Appendix L. 12.

(b) 5 I. L. R., Calc., 294.

(c) 6 I. L. R., Bom., 7.

The words of the section "*any* decree of the Small Cause Court" appear to be wide enough to allow of it. See also note to ■ 1.

32. Notwithstanding anything contained in the Code of Civil Procedure ■ applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as ■ servant, in the same manner as if he were of full age.

Minors may sue in certain cases as if of full age.

BY s. 440 of the Civil Procedure Code every suit by a minor must be instituted in his name by ■ adult person who shall be called the next friend of the minor. This section, however, following a provision of the repealed law (a), allows a minor to sue in his own name, without the intervention of a next friend, for wages or piece-work or for work ■ a servant, provided that the sum claimed does not exceed 500 rupees.

Section 70 of the Contract Act provides that where ■ person lawfully does anything for another person, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of the thing so done (b). So that where one person serves or works for another and no particular rate of remuneration or wages is fixed upon beforehand, but the service is not intended to be rendered gratuitously, and the person served benefits by the work or service, he must pay a fair and reasonable amount for the same, regard being had to the nature of the work or service.

The section of the Contract Act also refers to the non-gratuitous delivery and acceptance of goods, but that portion does not apply to this section which relates only to "wages or piece-work or work as a servant."

In respect to the delivery of goods by a minor, and in all other cases except those mentioned in this section and in all cases for ■ amount exceeding Rs. 500, the provisions of Chapter XXXI of the Code of Civil Procedure, relating to minors, must be followed.

By s. 3 of the Majority Act every minor, of whose person or property ■ guardian has been appointed by a Court of Justice, and every minor under the Court of Wards, shall be deemed to have

(a) Act IX of 1850, s. 31.

(b) Act IX of 1872, s. 70.

attained his majority at 21 years and not before. Every other person shall be deemed to have attained his majority at 18 years.

See also the Minor's, Majority and Indian Succession Act (a).

Power to  
delegate non-  
judicial  
duties.

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code ■ so applied, may be done by the Registrar of the Small Cause Court, or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

THE High Court has declared the following acts, which may be performed by the Registrar, to be non-judicial and quasi-judicial acts:—1. The execution of commissions issued or received under any law. 2. Receiving powers-of-attorney or powers to plead for the purpose of being filed in Court and taking the necessary evidence to prove the same. 3. Taking affidavits. 4. Receiving applications for and determining the returnable date of a summons. 5. Staying sales in execution of decree. 6. Taking security in any matter. 7. Granting instalments under s. 30 of the Act. 8. Ordering payment of money except in cases in which any question arises requiring judicial decision (b).

Registrar to  
hear and  
determine  
suits like a  
Judge.

34. The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same :

Proviso.

Provided that, subject to the control of the Chief

---

(a) The Minor's Act, XL of 1853; The Majority Act, IX of 1875; The Indian Succession Act, X of 1865.

(b) Letter of the High Court, dated 4th August 1882.

Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

SEE notes to ss. 10 and 14. Under the general rule any Judge of the Court may transfer to his own file any suit on the file of the Registrar.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

Registrar may execute all decrees with the same powers as a Judge.

UNDER this section the Registrar may receive and pass orders on all applications for the execution of decrees with the same powers as a Judge. He may receive and pass orders on applications for copies of decrees and certificates for execution by other Courts; for the transferring of decrees to the High Court and other Courts; for the release and commitment of judgment-debtors; for staying sales and granting time to judgment-debtors, and generally may make any order in the execution of a decree, whether of the Small Cause Court or of any other Court, sent for execution, which a Judge of the Court may make.

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

EVERY decree or order of the Registrar, whether in the decision of a suit or made under s. 35, shall be subject to the same provisions and rules in regard to new trial as if made by a Judge.

## CHAPTER VI.

### NEW TRIALS AND RE-HEARING.

37. Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive; but the Court may, on application of either party, made within eight

Judgments and orders of Court final.



Power to  
order new  
trial in Small  
Cause Court.

days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure), order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

EVERY judgment and order of the Court is *final* unless altered or set aside on an application for a new trial or in a new trial.

The application for a new trial or to alter, set aside or reverse a decree or order, except in the case of an *ex-parte* decree or order, must be made within eight days from the date of the decree or order, exclusive of the day on which it was passed.

In *ex-parte* cases it must be made within thirty days from the date of executing any process for enforcing the judgment (a).

The application under this section must be made to ■ Full Bench constituted under Rule 48. In *ex-parte* matters the application may be made to ■ single Bench, ordinarily the Bench which passed the original decree or order.

A decree passed under s. 522 of the Code is ■ judgment on an award to which this section and the rules relating to new trials do not apply. This matter is governed by Chapter XXXVII of the Code, and the time allowed for ■ application to set aside an award is ten days from the day the award is submitted to and read by the Court (b).

The Court may (1) order a new trial to be had; or (2) alter, set aside or reverse the original decree or order without ■ new trial.

The power of the Court to grant a new trial is limited only to such decrees and orders, as by this Act or any other law for the time being in force are otherwise "specially provided" for. The practical result is, that the Court may in nearly every ■ grant ■ new trial or alter, set aside or reverse a decree or order. The words of the corresponding section in Act IX of 1850 and in the County Courts Act ■ "in every case whatever" (c). The terms upon which the Court may do so are in its discretion, and it may stay any proceedings pending the result of the application.

The following matters are "specially provided" for in this Act and in the Code of Civil Procedure:—

By s. 69 of this Act, when two or more Judges sitting together

(a) Indian Limitation Act, XV of 1877, sched. ii, 3rd divn., art. 164.

(b) *Ib.*, 158.

(c) Act IX of 1850, s. 52; ■ and 10 Vict., cap. 95, s. 89; Broom's County Courts Practice, 2nd ed., 193.

in "any suit or in any proceeding under Chapter VII" differ in opinion on any question *mentioned in that section*, the question upon which they differ 'shall' be referred for the opinion of the High Court, and when judgment is given contingent upon that opinion, there can be no application for ■ new trial from such judgment.

And in "any suit or proceeding" where the amount or value of the subject-matter exceeds 500 rupees, and any party so requires it, the Court 'shall' refer any question, *mentioned in s. 69*, and when judgment is given contingent on the opinion of the High Court, there can be no application for ■ new trial from that judgment.

In both these cases the references are *compulsory*, and paragraph ■ of s. 70 provides that unless the security required by that section is furnished, "the party against whom such contingent judgment has been given shall be deemed to have submitted to the same" (a).

The Code of Civil Procedure, s. 617, provides for references in cases where the amount or value of the subject-matter does not exceed 500 rupees. The section itself does not limit references to such cases, but so far as the Presidency Small Cause Court is concerned it must be read in connection with s. 69 of this Act. Under s. 617, the Judge is only to refer ■ question on which he entertains a "reasonable doubt," and he may refer it either of his own motion or at the request of any party to the suit. If the suit exceeds 500 rupees, he 'shall' refer under s. 69 whether he entertains ■ doubt or not, if so requested. Where then ■ suit is referred under the "special provisions" of s. 617 and ■ judgment is passed contingent on the opinion of the High Court, there can be no application for ■ new trial from such judgment. The party having elected to take advantage of the "special provision" must proceed with the reference or submit to the judgment—*Fornaro v. Ramnarain Sookdeb, ante*. He cannot apply that the order of reference be set aside and a new trial granted.

A party cannot apply for a new trial on the ground that a reference has been refused under s. 617. For the Court is not bound to refer under that section, and even at the request of ■ party the Judge ought not to do so unless he also entertains ■ "reasonable doubt." But of course these words should be liberally interpreted, and if the point raised is a difficult or novel one, about which there may reasonably be two opinions, a Judge will do well in not relying too implicitly ■ his own opinion. It may be better to consider the section conversely and to say that where ■ party asks for a reference it should be granted unless there is no room for "reasonable doubt." If the point has already been decided, or is of such a nature that there ■ be ■

---

(a) *Fornaro v. Ramnarain Sookdeb*, 14 B. L. R., 182.

reasonable doubt about it in the mind of any person acquainted with the subject, it should not be referred.

It has been held, that a decision rejecting (or granting) an application for a new trial is not a "contingent judgment" within the meaning of s. 55 of Act IX of 1850 or s. 7 of Act XXVI of 1864, and that where in an application for a new trial the Judges differed in opinion, the point upon which they differed could not be referred, but a new trial was necessary before a reference could be made (a). The language of s. 69 of this Act is similar, but there were no provisions in the repealed Acts such as those contained in ss. 11 and 37 of this Act. This decision, however, is still of value in as far as it declares what is a "contingent judgment."

The combined effect of ss. 11, 37 and 69 appears to be this:—

(1.) A decision merely granting or refusing an application for a new trial, whether the Judges differ in opinion or not, cannot be reserved or made contingent upon the opinion of the High Court. The question, whether a new trial should or should not be granted, is not one which can be referred to the High Court.

(2.) If in such an application two or more Judges differ and the question on which they differ is one of fact or one not falling within s. 69, the procedure prescribed by s. 11 must be followed, that is, the opinion of the Senior Judge, or of the majority, shall prevail and there can be no reference.

(3.) If the Court, being *unanimous*, desires to "alter, set aside or reverse" the original decree or order (which under this section it may do without a new trial), the judgment of the new trial Bench becomes the *final* judgment in the suit, and may be reserved or made contingent on the opinion of the High Court, at once, at the request of the party against whom it is given, *provided the amount or value of the suit exceeds 500 rupees*, but not otherwise.

(4.) If the Court *differs in opinion* on any question mentioned in s. 69, *irrespective of the value of the suit*, and by the casting voice of the Senior Judge or by a majority of Judges desires to grant a new trial or to alter, set aside or reverse the original decree or order, the question on which the Judges differ must be referred and judgment may be reserved or made contingent on the opinion of the High Court.

It may be stated generally that questions of fact Appellate Courts are unwilling, except upon clear grounds,—as where a mistake has been made, or some fact has been overlooked, or sufficient weight has not been attached to it,—to interfere with the original judgment. The reason is an obvious and sound one. The Judge of first instance,

---

(a) *Hall v. Joakim*, 12 B. L. R., 34.

who has heard the evidence and seen the demeanour of the witnesses is usually in a far better position to judge of the value and effect of the evidence than a Court which has not had these advantages and can only rely on statements, at second-hand, of the evidence given. In a Court of summary jurisdiction, where ■ full record of the evidence is not kept and the Judge who tried the case is often the only repository of that evidence, the difficulty is increased, and therefore the Courts are always reluctant in questioning a decision on the facts. In India nothing but long and constant experience of native witnesses and evidence will make a good judge of facts: but with this experience ■ sort of 'instinct' grows up, difficult to describe in words, which enables a Judge to distinguish between the true and the false, the tutored and the genuine witness.

Subject to the foregoing general observations ■ new trial may be granted on any of the following grounds:—

1. The improper admission or rejection of evidence, subject to the provisions of s. 57 of the Evidence Act.
2. Mistake or misapprehension of fact or law on the part of the Judge.
3. Improper refusal to postpone the trial.
4. Improperly allowing or refusing an amendment at the trial.
5. Mistake in the decree or order entered in the suit.
6. Improper service of summons and no notice of action.
7. That the damages awarded were glaringly excessive or palpably insufficient.
8. That the judgment was manifestly against the weight of evidence.
9. Misleading or taking by surprise the party against whom the judgment has been given.
10. Misconduct or non-attendance of a material witness.
11. Perjury or mistake of ■ witness on a material point.
12. Surprise or fraudulent trick at the trial.
13. Discovery of fresh evidence, *discovered after the trial*, and of such a nature as if it had been produced at the trial, it must have resulted in a judgment for the party offering it. But the mere discovery of witnesses to contradict those examined at the trial is not of itself ■ sufficient ground.
14. Material irregularity, error ■ defect in the proceedings affecting the issues.
15. Want of jurisdiction.
16. Generally upon satisfying the Court that there has been ■ miscarriage of justice remediable by a new trial.



Section 167 of the Indian Evidence Act (a) provides that the improper admission ■ rejection of evidence shall not be ground for a ■ trial or reversal of a decision if, independently of the evidence so admitted ■ rejected, there ■ sufficient evidence to justify ■ decision (b).

A mistake by the Court ■ ■ collateral point, not material to the issues, is not ■ ground for a new trial. The admission or rejection of particular evidence is not a ground for a new trial unless the objection was distinctly raised at the trial.

An objection to the applicability of evidence should be made before judgment, and is not a ground afterwards for ■ new trial.

If a party neglects at the trial to put forward a condition of ■ contract on which he might have relied, the omission is not a ground for a new trial.

An objection waived at the trial cannot be put forward afterwards as ■ ground for ■ new trial.

The mere refusal of the Judge to recall ■ witness at the trial is not a ground for ■ new trial. It is a matter in the discretion of the Judge, but if the circumstance should have led to a miscarriage of justice and the discretion has been wrongly used by the Judge, it will be a good ground.

So, where the Judge has wrongly decided ■ to which party had the right to begin, it is no ground for ■ new trial unless clear and manifest injustice has been done.

See Chitty's Archbold, Broom's Commentaries and Broom's County Court Practice (c).

See also Rules 40, 42, 43, 44, 45 and 46.

Application  
for re-hear-  
ing in High  
Court.

38. Any party may, within eight days after the judgment in any suit in the Small Cause Court in which the amount or value of the subject-matter exceeds one thousand rupees, apply to the High Court for an order that such suit may be re-heard in the High Court.

Such application shall be supported by affidavits, and, in case the applicant has appeared in the Small Cause Court by advocate, vakil, attorney or pleader,

(a) Act II of 1855, s. 167.

(b) Field's Law of Evidence, 3rd ed., 649—62.

(c) Chitty's Archbold, 9th ed., Vol. I, 348—82, and Vol. II, 23—51; Broom's Commentaries, 2nd ed., 210—16; Broom's County Court Practice, 2nd ed., 167, 171, 192 and 193.

by ■ certificate from such advocate, vakil, attorney or pleader that in his opinion there are good grounds for re-hearing the suit, and if, on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex-parte*, on such terms as it thinks fit, for such re-hearing, and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546 and 547 of the Code of Civil Procedure, relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

THIS is a new provision. It lays down the procedure to be followed in an application for a re-hearing in the High Court. The application to the High Court must be made within eight days after the judgment of the Small Cause Court has been delivered. It only applies to suits exceeding 1,000 rupees in value.

The same fees must be paid upon the application to the High Court ■ in a suit for the same amount in the Small Cause Court. See s. 71, para. 3.

39. On the day fixed under section thirty-eight or on any other day to which the re-hearing may be adjourned, the High Court, or some Judge thereof, shall proceed to re-hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided,

Procedure  
at re-hearing.

all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction shall be followed in suits re-heard under this section : Provided that there shall not be any appeal from any judgment, decree or order under this section.

THE judgment of the High Court is to be *final*, no appeal or new trial being allowed.

Execution of  
decree of  
High Court,

40. Every decree or order made by any High Court upon any such re-hearing may either be executed by such High Court in the same manner as other decrees or orders of such Court, or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

A DECREE under this chapter may be executed either in the High Court or in the Small Cause Court at the option of the decree-holder.

## CHAPTER VII.

### RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

Summons  
against per-  
son occupy-  
ing property  
without  
leave.

41. When any person has had possession of any immovable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission, of another person, or of some person, through whom such other person claims,

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called

the occupant) refuses to deliver up such property in compliance with ■ request made to him in this behalf by such other person,

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

THIS chapter applies only to tenants or occupiers of immoveable property holding over after the expiry of the tenancy or determination of the occupation. See the County Courts Amendment Act, s. 50 (a). The parties must stand in the position of landlord and tenant to each other, or the occupier must at one time have been permitted to use or occupy the premises. A question of purely adverse title cannot be tried under this chapter or under this Act at all; see s. 49.

The term 'landlord' is not used in this section ■ in the 50th section of the County Courts Act, but the 'applicant' of this section is clearly the 'landlord' of the English Act. 'Landlord' is defined in s. 142 of the 9 and 10 Vict., cap. 95, to mean "the person entitled to the immediate reversion of the lands, or if the property be held in joint tenancy or coparcenary, or tenancy in common, any one of the persons entitled to such reversion."

The section contains the following provisions :—

(1.) The property must be situated within the local limits.

(2.) The 'annual value' of the property must not exceed 1,000 rupees at ■ 'rack-rent';—i. e., the full annual value. If such annual value exceeds 1,000 rupees, the Court has no jurisdiction.

(3.) The person sought to be ejected must be the 'tenant,' 'occupier' or 'occupant' of the property. He must have entered as a 'tenant' of the applicant or ■ 'occupier' with his permission, or ■ the 'tenant' or with the permission to 'occupy' of some person through whom the applicant claims.

*A lets to B at a fixed rent. B is the 'tenant' of A. A may eject B.*

*A permits C to occupy free of rent. C is an 'occupier.' A may eject C.*

*B or C let to D, or permit D to occupy. D is an 'occupant.' A may eject D.*

---

(a) 19 and 20 Vict., cap. 108, s. 50; Broom's County Courts Practice, 2nd ed., 282, *et seq.*



*A* dies leaving the property to *E* by will, or *E* succeeds as heir of *A*. *B*, *C* and *D* stand in the same position towards *E* as they did to *A*. *E* may eject *B*, *C* and *D*.

*A* sells the property to *F*. *B*, *C* and *D* stand in the same position towards *F* as they did to *A*. *F* may eject *B*, *C* and *D*.

*A*, *E* and *F* may let the property in *izarah* to *G*. *B*, *C* and *D* stand in the same position towards *G* as they did to *A*, *E* and *F*. *G* may eject *B*, *C* and *D*.

"Such other person" in all these instances means *A*. *E* and *F* claim through *A*. *G* claims through *A* or through *E* and *F*, as the case may be, who claim through *A*. But the various transfers must be legal and *bonâ fide*. If any question of title arises, the application will not lie. But it must be a *bonâ fide* dispute and not raised merely for the purpose of obstruction. The Court is entitled to enquire to this extent and to ascertain whether the objection is *bonâ fide* or not. If the defence discloses a question of adverse title, then the parties do not stand in the position of landlord and tenant to each other, nor is the defendant an 'occupier' within the meaning of the section. It is the absence of any such question which places the transferees of the property in the shoes of the transferors for the purposes of this section. When such transfers take place, the tenants and occupiers should have due notice of the same and intimation to pay future rents to the new landlord: otherwise want of such notice and intimation may be a good answer to an application.

(4.) The tenancy or permission to occupy must have terminated or been withdrawn. As to the determination of a lease see s. 111 of the Transfer of Property Act (a).

(5.) The 'tenant,' 'occupier' or 'occupant' must have refused, after request made, to deliver up possession. The request, in the absence of any special agreement, is conveyed by means of a notice to quit. Continuance in possession after the termination of the notice constitutes a refusal. In the case of a lease no special notice is necessary, the date of the determination of the tenancy being stated in the lease itself, or, where no date is indicated, by express provision of law. See s. 110 of the Transfer of Property Act (a). But if a tenant is permitted to continue in occupation after the expiry of the lease, a new monthly tenancy has been entered upon, and if it is afterwards sought to eject him, a notice is necessary. See ss. 106 and 116, Transfer of Property Act (a).

When these several conditions exist, a landlord may apply for a summons against the 'tenant,' 'occupier' or 'occupant' to show cause why he should not be compelled to deliver up possession of the premises.

In any case in which the 'tenant' or 'occupier' has sub-let, or let in any other person called the 'occupant,' both the 'tenant' and 'occupant' or 'occupier' and 'occupant' should be served with notice and made defendants.

The language of this section is somewhat different from s. 91 of Act IX of 1850 and s. 122 of the earlier County Courts Act (a). It has been held under the last of these enactments, that the section only extends to cases where the ordinary relationship of landlord and tenant exists between the parties (b); and under s. 50 of the later statute (c) it has been held, that where the claimant was the owner and the occupier was in possession under an agreement for purchase, so that the relation between the parties was not the ordinary relation of landlord and tenant, the section did not apply (d). Nor can a mortgagee eject a tenant or occupier let in by the mortgagor unless the latter has consented to hold under the mortgagee, in other words, has attorned to him (b). But a mortgagee in possession may eject a tenant let in by the mortgagor or by a lessee of the mortgagor after the mortgage and without the knowledge or consent of the mortgagee (e).

It has been held by the late Supreme Court of Calcutta, that s. 91 of Act IX of 1850 did not apply to cases involving questions of adverse title, although there was a difference in the language of the sections of the English and Indian Acts; and s. 91 of Act IX of 1850 conferred a wider jurisdiction than the corresponding section of the earlier County Courts Statute (f). The language of s. 41, so far as the Supreme Court decision is applicable, is in effect the same ■ that of s. 91 of the repealed Act. Both use the word 'occupier' as distinct from 'tenant,' and this section also applies to ■ holding "by permission of another person, or of some person through whom the applicant claims."

In the case of *Hurry Money Dossee v. Gopal Chunder Mookerjee*, it was said:—"This Act goes further: it uses the word 'occupier' as distinct from 'tenant,' and 'occupy' as distinct from 'hold.' But the context shows plainly that 'occupier' is used in a sense in which it is frequently employed to denote mere actual possession of lands, which are permissive, or have been so, and yet where there is no holding or tenure by any hand, and no relation of a tenant to ■ landlord, or ever was. It includes adverse holdings in ■ once permitted occu-

(a) Act IX of 1850, s. 91; 9 and 10 Vict., cap. 95, s. 122. (e) *Kuch v. Hall*, 1 Smith's L. C., 523.

(b) *Jones v. Owen*, 5 D. and L., 669. (f) *Hurry Money Dossee v. Gopal*

(c) 19 and 20 Vict., cap. 108, s. 50. *Chunder Mookerjee*, 2 Tayler and Bell,

(d) *Banks v. Rebbeck*, 20 L.J., Q.B., 476. 57; Temple's Practice, 144.

pation, as where a house has been lent, or a servant or clerk has in part occupied; but only as incidental to his service, and not with any view to tenantry. The sense of the word is derivable from its association with the word 'tenant'; and it would be a strange rule of construction to force it into the sense of an adverse holding by one claiming to hold as absolute holder, whether on a good or bad title." This decision is so far applicable to the present section.

In s. 91 of Act IX of 1850 and in the corresponding section of the County Courts Act (a) the words are "value or rent;" and in the case of the *Earl of Harrington v. Ramsay* (b) it was said: "It would be a serious inconvenience if the tenant could contend that the premises were worth more than their real value, when the rent was fixed and ascertained. The Legislature did not intend that, *but only that value should be considered when no rent had been fixed.*" The difficulty raised by the English statute is avoided here to some extent by the omission of the words "or rent." But there may be cases where no value or rent has been fixed. In such cases the rule laid down in the case just cited may be followed: if a rent has been fixed between the parties, that may be taken to be the "annual value:" if no rent has been fixed, the "annual value" must be stated and, if questioned, proved in the ordinary way. 'Value' means the actual market-value, and not the value which the parties, for their own purposes, may choose to put upon the premises (c).

See Rule 53.

A tenant holding under an unexpired lease, with a clause for re-entry by the landlord, on breach of particular covenants, is not a monthly tenant and cannot be ejected on a notice such as is usually given to a monthly tenant holding over. But the landlord may serve a notice to determine the lease on the ground of the forfeiture, and on the expiration of such notice may, if the tenant refuses to give up possession, apply for an order to eject him. When the forfeiture has been caused by non-payment of rent, and at the hearing of the suit the lessee pays or tenders the rent in arrear, with interest and costs, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may pass an order relieving the lessee against the forfeiture, and the lessee shall hold the property as if the forfeiture had not occurred.—Section 114, Transfer of Property Act (d).

In Calcutta, the period of notice, in the case of tenants or occupiers holding over, has always been one calendar month (English or Native according to the terms of the tenancy), terminating with the last day

(a) 9 and 10 Vict., cap. 95, s. 122.

(b) 2 E. and B., 669.

(c) *Elston v. Rose*, 4 L. R., Q. B., 4.

(d) Act IV of 1882.

of the month. A notice is good if given for the anniversary of the day on which the tenure commenced (a). See also s. 110 of the Transfer of Property Act.

Section 108 of the Transfer of Property Act (b) provides that in the absence of a contract or local law or usage to the contrary, a lease of immoveable property, other than a lease for agricultural or manufacturing purposes, shall be deemed to be a lease from month to month, terminable on the part of either lessor or lessee by fifteen days' notice, expiring with the end of a month of the tenancy. It may be doubted, however, having regard to the well-established usage in Calcutta of giving ■ month's notice to tenants holding over before bringing an ejectment suit, whether ■ notice of fifteen days only might not, on the ground of local usage, be successfully contested. It has certainly been the custom in Calcutta, so far as the Small Cause Court is concerned, for over thirty-two years, to give a month's notice in such cases, and probably the usage is of much older standing. It may, therefore, be advisable to continue the practice (a).

If a tenancy runs from the middle or other date of one month, it ends on the corresponding date of the succeeding month. But where in such a case the landlord has been paid for the broken period of the first month and there is no agreement to the contrary, the tenancy will be taken to run from the first day of the second month, and so on.

The notice should in all cases be carefully worded, and where there is no written lease or agreement, the boundaries of the premises should be set out. Cases often fail for bad or defective notice, and therefore strictness and accuracy are necessary in drawing up and serving notices.

Every notice to quit must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to ■ conspicuous part of the property. See s. 106, Transfer of Property Act (b).

The Transfer of Property Act should be read and considered in connection with all applications under this chapter.

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant. Service of Summons.

THIS section provides that the summons shall be served in the manner provided by the Civil Procedure Code for the service of a



summons on a defendant. Under the repealed Act there were special rules for the service of ejectment summonses, and under this section the summons must be issued in duplicate and served in one or other of the modes provided by ■ 74—82 of the Code. Under s. 79 the person served is to sign an acknowledgment.

Order for  
possession.

43. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-one, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

*Explanation.*—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

IF the plaintiff succeeds in his application, the Court is to fix the day on which possession is to be given, and the date must be mentioned in the order. Under the repealed law the warrant of possession had to be applied for 'forthwith' and possession had to be given between the seventh and tenth days from the date of the warrant. Practically, therefore, a tenant had only ten days allowed him to remove after the order was passed. This, for various reasons, was often an insufficient time, and therefore the Court, instead of passing the order at once, frequently adjourned the matter to give the tenant a reasonable time to remove. If at the end of that time he failed to remove, the applicant took his order and executed it within ten days. This procedure is avoided by the Court being able to fix the date for giving possession, thereby enabling it to give the tenant reasonable time to remove. See s. 50 of the County Courts Amendment Act (a.)

The Explanation provides that if the 'occupant' (or the 'tenant' or 'occupier') proves that the tenancy was created or permission granted by virtue of a title which determined previous to the application, he shall be deemed to have shown cause within the meaning of

the section. *B* during the currency of a lease from *A* has sub-let to *D*. *B*'s lease expired on 30th June. In July *B* applies to eject *D*. *D* has only to show that *B*'s tenancy expired in June. *B*'s application must be dismissed.

*C*, who holds by permission of *A*, has allowed *D* to occupy. *A* has withdrawn his permission to *C* on 30th June. *C* cannot eject *D* after that date.

*A* has sold the property to *F* on 30th June and given him possession. *A* cannot eject the tenants and occupiers after that date.

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant : and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Such order to justify bailiff entering — property and giving possession.

Bar to proceedings against Judge or officer for issuing, &c., order or summons.

ENTRY on the premises for the purpose of giving possession must be made between six in the morning and six in the evening. But no order can be served on Sunday, Christmasday or Good-Friday, or on any Hindu during the four days of Doorga Pujah, viz., Saptami, Ashtami, Navami and Dashami, or on any Mohamedan — the following four days, Eed-ul-Fitre, Eed-uz-Zoha (or Bukri-eed) and the last two days of Mohurram.

See Rule 27.

No suit or prosecution will lie against a Judge or officer for anything done, *bouâ fide*, under this chapter, even although the applicant may not have been entitled to the possession of the property.

Applicant if entitled to possession, not to be deemed trespasser for any error in proceedings.

Occupant may sue for compensation.

45. When the applicant, at the time of applying for any such order ■ aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be ■ trespasser ; but any person aggrieved may bring ■ suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity :

when no such damage is proved, the suit shall be dismissed ; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

THIS section corresponds to s. 96 of Act IX of 1850. The plaintiff is not to be held responsible as a trespasser for mere error, defect or irregularity in the mode of proceeding, but the occupant is entitled to compensation for any damage actually sustained by him. If the Court does not award him more than ten rupees ■ compensation, he shall receive no more costs than compensation, unless the Judge certifies for full costs.

The suit must be brought within ninety days from the date when the act or omission complained of took place (a).

Liability of applicant obtaining order when not entitled.

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for

(a) Indian Limitation Act, XV, 1877, sched. ii, art. 2.

such order as aforesaid entitled to the possession of such property.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

Application for order in such case an act of trespass.

THIS section contains the provisions of ss. 93 and 97 of Act IX of 1850. If the applicant was not entitled to possession he is to be deemed a trespasser, and this although no possession may have been taken under the order. The mere application for the order is sufficient. The period of limitation is three years from the date of the trespass (a).

47. Whenever, on an application being made under section forty-one, the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass, and to pay all the costs of such suit in case he does not prosecute the same, or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

Stay of proceedings on occupant giving security to bring a suit against the applicant.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section forty-three.

Nothing contained in section twenty-two shall apply to suits under this section.

THIS section provides for the staying of proceeding under s. 41. If the occupant binds himself, with two sureties, in a bond, for

(a) Indian Limitation Act, XV, 1877, sched. ii, art. 39.



an amount to be fixed by the Court, to institute *without delay* ■ suit in the High Court against the applicant for compensation for the alleged trespass, the Small Cause Court shall stay the proceedings under s. 41 pending the result of the High Court suit, and if the occupant obtains ■ decree in the High Court, that decree shall supersede any order passed under s. 43. For the form of bond see Appendix (a).

This section is intended to provide ■ summary means of staying the execution of an order for possession. The bond must be given and the suit instituted in the High Court *without delay*. But the non-adoption of this course will not disentitle a tenant or occupant who has been dispossessed from proceeding under the previous section for compensation within the period allowed by the general law of limitation.

The provisions of s. 22, relating to costs, do not apply to ■ suit of this nature instituted in the High Court.

Proceedings  
to be regulat-  
ed by the Code  
of Civil Pro-  
cedure.

48. In all proceedings under this chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

THE service of summons is specially provided for in s. 42. In other respects applications under s. 41 are treated ■ suits: see Rule 53, and all suits are tried ■ in a Court of first instance, subject to such modifications as have been made under s. 23.

Recovery of  
possession no  
bar to suit to  
try title.

49. Recovery of the possession of any immovable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

AN order of possession by the Small Cause Court does not constitute ■ *res judicata* as regards the title to the property, which may be tried in the High Court. The Small Cause Court has no power to try ■ question of title under this chapter. See note to s. 41.

## CHAPTER VIII.

## DISTRESSES.

50. This chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay. But nothing contained in this chapter applies—

Local extent of chapter. Saving of certain rents.

(a) to any rent due to Government ;

(b) to any rent which has been due for more than twelve months before the application mentioned in section fifty-three.

A DISTRESS can only be levied within the local limits of the jurisdiction of the Court and on the premises in respect of which the rent is claimed. There is no limit ■ regards the amount for which a distress may be levied, but the rent must not be due more than twelve months. The section does not apply to rent due to Government. See note to ■ 3.

51. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this chapter, and may from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

Appointment of bailiffs and appraisers.

A CERTAIN number of bailiffs and appraisers are appointed under this section to carry out the purposes of this chapter. They are remunerated partly by salary and partly by fees and commission.

Under s. 13 the *Chief Judge* may appoint and suspend bailiffs and other officers, but no officer drawing a monthly salary of 100 rupees or upwards can be removed without the previous sanction of the Local Government.

By this section the *Judges* are to appoint the bailiffs and appraisers and may suspend or remove them, and there is no provision, as in s. 13, that the removal is to be subject to the sanction of the Local Government when the monthly salary of the officer exceeds 100 rupees.

Under ■ 13 the Chief Judge is to exercise sole authority. Under this section the authority rests with the Judges as a body.

Another anomaly raised by this chapter is, that the term 'Judges' is used all through the chapter, while elsewhere in the Act the term used is 'Court.' The explanation ■ doubt is that the Distress Act, I of 1875, has been embodied as it stood, with little modification, into this Act as Chapter VIII; but this does not give rise to any practical difficulties.

Security to be  
given by ap-  
pointees.

52. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

SECTION 21 of the Indian Penal Code defines "public servants."

Application  
for distress-  
warrant.

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

THE application for a distress-warrant may be made to any Judge of the Court or to the Registrar. In practice it is usually made to the Registrar. The person claiming the rent or his duly constituted attorney (*i. e.*, constituted in writing) may make the application, which must be supported by an affidavit in the form given in the schedule. For the form of application ■ Appendix (a).

When the rent is claimed under ■ lease or agreement in writing, the document must always be produced. Where such a document is in existence, a distress-warrant will not be granted without its production. Where no lease or agreement exists, the fact should invariably be stated in the application and must be sworn to. The Court is very strict in this matter. The old rule ■ that ■ distress could issue except on ■ lease

or written agreement. In recent years it has been relaxed in favor of oral agreements, and § 107 of the Transfer of Property Act recognizes oral leases, but no oral agreement can be allowed to supersede or take the place of a written one. Persons not unfrequently enter into leases and agreements, which from deficient stamp, want of registration or other cause cannot be used in Court, and apply for a distress-warrant on the allegation that no written lease or agreement exists, suppressing the fact of the inadmissible document. If the distress is contested and the fact comes to light, the warrant is discharged with costs and compensation, and the applicant renders himself liable to a criminal prosecution and serious consequences.

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form (marked B) contained in the same schedule addressed to any one of such bailiffs.

Issue of distress-warrant.

The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

THE Court is not bound, as a matter of course, merely upon the affidavit to grant a warrant. It "may at its discretion," upon personal examination of the applicant, decline to issue it. On the subject of the general law of distress and the grounds on which it may be granted and withheld, reference must be made to Woodfall's Landlord and Tenant (a).

The warrant is to be returnable within six days, and only the 'moveable' property in the house and premises in respect of which the rent is claimed can be distrained.

See Form II in the schedule and s. 57 and note.

55. Every distress under this chapter shall be made after sunrise and before sunset, and not at any other time.

Time for distress.

NO distress can be levied before sunrise or after sunset, or against any person on a Sunday, Christmas-day or Good-Friday; or against any Hindu during the four days of Durga Pujah, viz., Saptami, Ashtami, Navami, and Dashami, or against any Mohamedan on the following four

(a) Woodfall's Landlord and Tenant, 6th ed., 326—84.



days, Eed-ul-Fitre, Eed-uz-Zoha (or Bukri-eed) and the last two days of Mohurram.

See Rule 27.

What places  
bailiff may  
force open.

56. The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter:

Provided that he shall not enter or break open the door of any room appropriated for the zanáná or residence of women, which by the usage of the country is considered private.

"OTHER building" in the first paragraph of the section ■■■ an out-building, apart from the dwelling-house: such as a stable, coach-house, godown or cellar. The outer gate or door of ■ dwelling-house may not be broken open; but if the bailiff gains admission to ■ dwelling-house through an open outer door, he may break open the door of ■ inner room, subject to the proviso hereafter mentioned, if he has reason to believe that there is property in the room which may be seized. But it has been held, that where ■ distress has been lawfully begun and not deserted, but the bailiff was compelled to quit by violence, he could return with assistance and break open the outer doors: there was ■ re-continuance of the first taking, and so the second entrance was lawful (a).

The proviso forbids the entry or breaking open of ■ room used as a zanáná or residence of native ladies, which by the usage of the country is considered private. Section 271 of the Code of Civil Procedure specially provides for the seizure, in execution of ■ decree, of property in ■ zanáná, but this does not apply to a distress under this section.

Property  
which may be  
seized.

57. In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may in the bailiff's judgment be sufficient

(a) Woodfall's Landlord and Tenant, 6th ed., 355; Esp. N. P., 382.

to cover the amount of the said rent, together with the costs of the said distress :

Provided that the bailiff shall not seize—

(a) things in actual use ; or

(b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs ; or

(c) the debtor's necessary wearing apparel ; or

(d) goods in the custody of the law.

THE 'moveable' property in or upon the premises mentioned in the warrant, and *belonging to the debtor*, may be distrained. No more is to be taken than, in the opinion of the officer, is sufficient to cover the rent claimed and costs.

Things in actual use, wearing apparel, and goods in the custody of the law (*i. e.*, already under seizure) cannot be distrained.

Things, otherwise distrainable, are not to be seized while in "actual use,"—that is to say, a man's horse and carriage are not to be distrained when he is driving along the street or getting into his carriage at his own door: his horse is not to be seized when he is in the act of mounting. A cart and bullocks or a carriage are not to be seized when on their stand or plying for hire, although they may be seized in their stable or coach-house. A carpenter's ax may not be seized when he is chopping wood with it, and so on (a).

Tools and implements of trade may only be distrained when not in use and when there is no other moveable property sufficient to cover the warrant.

Section 28 is not applicable to distresses for rent. Tiled huts and fixtures may not be distrained for ground rent. As to the law relating to fixtures Woodfall's *Landlord and Tenant* should be consulted (b).

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent. Impounding  
distress.

THE property is secured by placing peons in charge of it, and the cost of keeping it must be paid by the tenant or deducted from the sale-proceeds.

(a) Woodfall's *Landlord and Tenant*, 6th ed., 348.

(b) *Ib.* 350-51.

Inventory.  
Notice of  
intended  
appraisement  
and sale.

59. On seizing any property under section fifty-seven the bailiff shall make an inventory of such property, and shall give ■ notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises.

Copies of in-  
ventory and  
notice to be  
filed.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

THE inventory must be made at the time of seizure. It ought to be made on the back of the warrant, which is then filed in Court. The notice to the tenant should be made out at the same time and should contain the inventory of the property seized. If the debtor is not on the premises, the notice may be left with any one in charge on his behalf.

Application to  
discharge or  
suspend war-  
rant.

60. The debtor, or any other person alleging himself to be the owner of any property seized under this chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms ■ he thinks just,

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

THE application must be made within five days from the day of seizure excluding the day of seizure. It may be made by (1) the debtor himself; (2) ■ duly constituted agent ■ attorney of the debtor; (3) any person alleging himself to be the owner of the seized property; (4) ■ duly constituted agent or attorney of such person.

The application must be to a Judge of the Court. The Registrar has no judicial authority under this section.

The Judge may give reasonable time to the debtor to pay, and for such time suspend the warrant. In such case the costs of keeping the property must be paid by the debtor. Other costs, as where the warrant is discharged, or an article released, or the application refused, shall be paid as the Judge directs.

Some of the grounds upon which an application may be made by the debtor are:—(1) where he holds the goods merely as bailee of another person; (2) where another person is partly interested with himself in the goods, as in the case of partners; (3) that the property was not distrainable under s. 57; (4) that the rent is not due; (5) that the distrainer's title has expired; (6) that the distress was levied contrary to the provisions of ss. 50, 55 or 56; (7) that the affidavit contains material misstatements of fact.

This section is intended to provide, by mere application, a summary remedy for the debtor himself or any person alleging himself to be the owner of the goods, as a lodger whose property has been seized for his landlord's debt. The next section provides for the hearing and determination of claims to goods distrained made by a stranger.

See Rules 38, 39, 40, 41, and 42.

61. If any claim is made to, or in respect of, any property seized under this chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

Claim to goods distrained made by a stranger.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall ad-



judicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit ;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Court in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

CLAIMS under this section are treated as interpleader-suits. The summons is to issue on the application of the bailiff. No time is fixed within which the claim must be filed, but it must be before the goods, or the proceeds of sale, have been parted with by the officers of the Court. If the goods or the sale-proceeds have gone out of the custody of the Court or its officers, nothing remains to interplead for. Property cannot be sold until the expiry of seven days from the date of seizure, so that there is always seven days at least before the property can be parted with. The sale-proceeds may remain in Court for any length of time, but this is not usual. The money is generally withdrawn a few days after being deposited. Any delay, therefore, in filing a claim should be avoided.

The claim is to be treated as an ordinary suit, the claimant being plaintiff and the distrainor defendant. The summons must be served in a suit. The claim must be heard by a Judge. The Registrar cannot adjudicate upon it.

If any suit has been brought in the High Court in respect of such claim, it shall, on the filing of the claim in the Small Cause Court, be stayed.

See Rules 49, 50 and 51.

Power to  
award com-  
pensation to  
debtor or  
claimant.

62. In any case under section sixty or section sixty-one, the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) if the Judge thinks fit,

and may for that purpose make any enquiry he thinks necessary ;

and the order of the Judge awarding or refusing

such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

THE Court may award compensation to a debtor a claimant under s. 60 and 61, and any order awarding a refusing the same shall be a bar to any suit for compensation.

Execution, in the ordinary way, may issue for any compensation ordered, and not paid, under these sections.

See note to s. 26.

63. In any case under section sixty or section sixty-one, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Power to transfer to High Court cases involving more than Rs. 1,000.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise a it thinks fit.

The procedure in cases transferred under this section shall conform, as far a may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction ; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction ; and every such order awarding or refusing compensation shall

bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

ONLY one case has been taken to the High Court under the corresponding section of the Distress Act (a) during a period of seven years, and the matter was eventually compromised.

The application must be made within seven days from the date of the seizure. No fees are payable in the High Court, under this Act, before filing the application.

Appraise-  
ment.

\* Notice of sale.

64. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

ON the expiration of five days the property ■ to be appraised and notice of sale given to the debtor. The sale is not to take place till after two clear days at least from the date of the notice. A copy of the notice must be filed in Court.

Sale.

Application  
of proceeds.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall on realizing the proceeds pay over the amount thereof to the Registrar of the Small Cause Court, and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt, and the surplus, if any, shall be returned to the debtor :

Provided that the debtor may direct that the sale

shall take place in any other manner, first giving security for any extra costs thereby occasioned

THE sale is to take place on the day mentioned in the notice if it has not been stayed or adjourned. The sale-proceeds should be forthwith paid into Court. The debtor may, on giving security for any extra costs, direct that the sale shall take place in any way most conducive to his interests, instead of by the bailiffs of the Court.

66. No costs of any distress under this chapter shall be taken or demanded except those mentioned in the part (marked E) or the third schedule hereto annexed. Costs of distresses.

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

THE scale of fees is contained in the third schedule (E). See also note to the schedule as to expenses of subpoenas and peons.

The bailiffs and appraisers are remunerated by a commission on the sale-proceeds.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered. Account of costs and proceeds.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter.

A SET of books as required by this section is kept up.

68. No distress shall be levied for arrears of rent, except under the provisions of this chapter ; Bar of distresses except under this chapter.



Penalty for  
making ille-  
gal distresses.

And any person, except a bailiff appointed under section fifty-one, levying or attempting to levy any such distress shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

THIS section is intended to provide against private distresses. Before the passing of the Distress Act, a landlord could employ his own bailiff to distrain the goods of his tenant for rent. This is no longer permitted, and any person attempting it is liable on conviction to the punishment laid down in this section.

## CHAPTER IX.

### REFERENCES TO HIGH COURT.

Reference  
when com-  
pulsory.

69. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

THIS section relates to compulsory references only. The first

clause provides for a difference of opinion when two or more Judges sit together, as in applications for, or in the hearing of, new trials. In such a case the question upon which the Judges differ shall be referred for the opinion of the High Court, and this irrespective of the amount or value of the suit.

The second clause provides for a reference in *all* suits, whether before a single Judge or a Court consisting of two or more Judges, where the amount or value of the subject-matter exceeds 500 rupees, and either party to the suit demands a reference to the High Court. In that case the question shall also be referred.

In both instances, however, the question to be referred must be a "question of law or usage having the force of law, or the construction of a document, which construction may affect the merits." A question of fact cannot be referred.

In either case the Court may reserve judgment or give judgment contingent on the opinion of the High Court. Under the repealed law the Court was always bound to give a contingent judgment (a).

It is in the discretion of the Court either to reserve judgment or give judgment contingent on the opinion of the High Court. It would be difficult to lay down any precise rule as to how the Court's discretion ought to be exercised in this matter; but the question is of consequence with reference to the security which has to be given under s. 70. Where a judgment is reserved, no security or deposit is required, and this in some cases may be a matter of importance to the party, particularly where the sum is large. On the other hand, it is necessary to guard against unnecessary and frivolous references and applications for the mere purpose of gaining time. This is no doubt the reason for placing a discretion in the hands of the Court. A safe general rule might be to follow the principle laid down in s. 617 of the Code of Civil Procedure relating to optional references in cases below 500 rupees. Where two or more Judges sitting together differ in opinion, or a single Judge trying the case entertains reasonable doubts on the question raised, the Court would reserve judgment. In the converse cases contingent judgment would be given.

Where a party to the suit requests the reservation of a question for the opinion of the High Court, and it is not reserved because the Judge entertains any doubts, if he does not appear in the High Court, the decision must be given against him, whether security has been given for the costs of the reference and the amount of the judgment or not. The Court is not bound to act as counsel for him (b).

---

(a) Act IX of 1850, s. 55; Act XXVI of 1864, s. 7.

(b) *Williamson Brothers v. Arab Ismail Khan*, 11 B. L. R., 415.

This section should be read in connection with ss. 11 and 37. See notes to these sections.

Security to be furnished on such reference by party against whom contingent judgment given.

70. When judgment is given under section sixty-nine contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment :

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

If no such security given, party to be deemed to have submitted to judgment.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

WHEN judgment is given under s. 69 contingent upon the opinion of the High Court, the party applying for the reference shall *at once* furnish security to be approved by the Court for the costs of the reference and the amount of the judgment. Such security may take the form of a bond by the party applying for the reference, with securities, in favor of the opposite party, to pay the amount of any judgment and costs which the High Court may order to be entered in the suit. For form of Bond see Appendix (a).

A deposit is always the simplest form of security, and when the Court has ordered the amount of the judgment (if any) and the costs of the reference to be deposited no other security shall be required. Forty-eight hours is allowed for furnishing security or making a deposit. See Appendix (b). Unless the security is given in one form or another, the party against whom the contingent judgment has been passed shall be deemed to have submitted to the same (c), the judgment becomes final and execution may issue thereon in the usual way.

(a) Appendix L, 19.

(b) Appendix A, 36.

(c) *Fornaro v. Ramnarain Sookdeb*, 14 B. L. R., 182.

See Order of the High Court relative to the hearing of references and costs of counsel and attorney in the High Court, Appendix (a). The High Court makes an order as to the costs in every case which, when allowed against the party applying for the reference, are paid out of the ■■■ deposited by him in the Small Cause Court.

## CHAPTER X.

### FEES AND COSTS.

71. A fee not exceeding—

(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value, Institution-fee.

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under section thirty-eight or section forty-one; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section twenty.

ALL court-fees ■■■ collected by ■■■ of adhesive stamps kept and sold specially for the purpose in the Treasury of the Small Cause Court, and no other stamps can be used for this purpose. See Appendix (b).

Fees have to be paid in the first instance—(1) on the plaint in every suit instituted in the Court; (2) ■■■ every application for ■■■ re-hearing in the High Court; (3) on every application for ■■■ summons to compel a tenant or occupier to deliver up property.



An additional fee of Rs. 10 must be paid ■ every agreement for the trial of ■ suit beyond Rs. 2,000 in value under s. 20.

For table of fees calculated for suits from Rs. 1 to Rs. 2,000 see Appendix F (a). Column 2 shows the institution-fee levied under this section. Column 3 the summons-fee under s. 72. A separate fee is charged for each summons, and a summons, issues for each defendant entered on the plaint. A ■ to a witness is charged at the same rate as a summons to a defendant.

Fees for pro-  
cesses.

72. The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.

BESIDES the institution-fees specified in s. 71, this section provides for the summons and other process fees to be taken in every case. Column 4 of the fourth schedule, which relates to summonses to defendants and witnesses, will be found carried out in column 3 of Appendix F (a), so far ■ relates to summonses to defendants. A separate summons issues for each defendant which has to be paid for separately. A separate summons also issues to each witness and is charged in the same way and at the same rate. Column 3 of the fourth Schedule and column 3 of Appendix F accordingly correspond. Column 4 of the fourth schedule contains the fees for other 'Processes,' not being summonses. These 'Processes' include notices required to be served through the Court, warrants, copies of decrees for execution by other Courts, attachments, and prohibitory orders.

See also Rule 25.

Repayment of  
half fees on  
settlement  
before hear-  
ing.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to

that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

SEE Rule 33.

'Hearing' in this section means the actual hearing of the suit, whether it be on the return day of the summons or on any day to which the hearing has been adjourned, provided it has not been entered on. But if a suit has been partly heard and adjourned and compromised in the interval, half fees are not returnable.

Each party is entitled to return of half the fees paid by him up to the date of the compromise.

Unless the suit has been settled by agreement of the parties, half fees are not returnable. A plaintiff withdrawing his suit, with leave of the Court, is not entitled to a return of fees.

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section forty-one made, by poor persons, and may issue processes on behalf of such persons without payment or on a part-payment of the fees mentioned in sections seventy-one and seventy-two.

Fees and costs of poor persons.

THIS section enables the Court to grant summonses and other processes without payment of fees, or on a part-payment, to poor persons. But if the plaintiff succeeds in his suit, the costs may be ordered against the defendant and recovered by execution in the usual way. In that event the court-fees are deducted from the amount realized, and the balance made over to the plaintiff.

75. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections seventy-one and seventy-two :

Power to vary fees.

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

THE Local Government may vary or reduce the fees taken under ss. 71 and 72, but cannot enhance them.

Expense of  
employing  
legal practi-  
tioners.

76. The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

THE High Court has sanctioned a scale of fees for all legal practitioners. See Appendix (a). No fees are allowed in suits not exceeding Rs. 20 in value, unless the Court should be of opinion, having regard to the importance, novelty or legal difficulty of the case, that it was reasonable to employ a legal practitioner. The fees to all legal practitioners, "whether in amount or otherwise," are in the absolute discretion of the Court. They are fixed at the termination of the suit, and the Court is to certify for the amount to be allowed subject to the limits laid down in the rules. Ordinarily, in suits not exceeding Rs. 100 in value, no fees are allowed to counsel, attorney or vakil.

In *ex-parte* cases, or where there is no contention on the part of the defendant, a fee of one-third is ordinarily allowed to pleaders, and in the case of advocates and attorneys, such fee as the Court thinks reasonable.

Sections 3, 5  
and 25 of  
Court-Fees  
Act, 1870,  
saved.

77. Nothing contained in this chapter shall affect the provisions of sections 3, 5 and 25 of the Court-Fees Act, 1870.

THE Court-Fees Act is VII of 1870.

The sections referred to provide as follows:—

3. The fees payable for the time being to the clerks and officers (other than the Sheriffs and Attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by Statute twenty-fourth and twenty-fifth Victoria, chapter one hundred and four, section fifteen, or chargeable in each of such Courts under No. eleven of the first and Nos. seven, twelve, fourteen, sixteen, twenty and twenty-one of the second Schedule to this Act annexed ;

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency towns and their several offices; shall be collected in manner hereinafter appearing.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney — to the necessity of paying a fee or the amount thereof, the question shall, when the difference is in any of the said High Courts, be referred to the Taxing Officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court — the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court.

The Chief Justice shall declare who shall be Taxing Officer within the meaning of the first paragraph of this section.

25. All fees referred to in section three or chargeable under this Act shall be collected by stamps.

## CHAPTER XI.

### MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary. Power to fine officers.

THIS section empowers the Chief Judge to punish summarily misconduct or neglect of duty on the part of inferior ministerial officers, by a fine not exceeding one month's salary. A book is kept in which all orders made under this section are entered, and when a fine has been imposed it is recovered from the next payment of salary due to the officer.

All fines so recovered must be shown in the monthly statement of account submitted to the Accountant-General.



Default of  
bailiff or other  
officer in exe-  
cution of  
order or  
warrant.

79. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

THIS section in effect corresponds to s. 85 of Act IX of 1850, and provides a summary remedy against a bailiff who has, by neglect, connivance or omission, failed to execute his warrant. If the charge is proved against him, he may be ordered to pay the amount of the writ to the person who issued it, and in default of payment the order may be executed like a judgment of the Court.

As to *negligent* and *voluntary* escape and re-capture ■ Chitty's Archbold (a). If a bailiff has allowed his prisoner to effect a voluntary escape, he cannot recover from him the sum which he may have been made to pay the plaintiff or other person issuing the writ.

Extortion ■  
default of  
officers.

80. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, ■ it thinks fit.

SECTION 86 of Act IX of 1850 contained similar provisions. Extor-

tion is also punishable under s. 384 of the Indian Penal Code with imprisonment for three years or with fine ■ with both. As to offences by public servants see ■ 161—69, Indian Penal Code.

81. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

Court empowered to summon witnesses, &c.

SEE Chapters X and XIV, Code of Civil Procedure, ■ extended to the Small Cause Court.

82. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

Enforcement of order.

SEE Chapter XIX of the Code of Civil Procedure, ■ extended to the Small Cause Court.

## CHAPTER XII.

### CONTEMPT OF COURT.

83. When any such offence ■ is described in section 175, 178, 179, 180 or 228 of the Indian Penal Code is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and punish the offender with fine which may extend to two hundred rupees, and in default of payment of such fine with imprisonment

Procedure of Court in certain cases of contempt.

in the civil jail for a term which may extend to one month unless such fine is sooner paid.

THE following are the offences mentioned in the sections of the Indian Penal Code referred to :—

1. (Section 175.) Intentionally omitting to produce ■ deliver up ■ document to the Court, when legally bound to produce and deliver up the same.

See also s. 174, Code of Civil Procedure.

2. (Section 178.) Refusing to be bound by an oath to state the truth, when required to do so.

Section 6 of the Oaths Act (a) allows natives of India and persons having ■ objection to taking an oath to substitute an affirmation; and s. 15 of the same Act extends s. 178 to affirmations.

3. (Section 179.) Refusing to answer any question demanded touching the subject under enquiry, when legally bound to answer the same.

See Chapter IX, Indian Evidence Act (b).

4. (Section 180.) Refusing to sign any statement made, when required to sign the same.

5. (Section 228.) Intentionally offering any insult or causing any interruption to the Court while sitting in any stage of ■ judicial proceeding.

Before proceeding under this section for the offences numbered 1 and 3, the Court should proceed under s. 87. It is only after punishment under s. 87 and on the offender "persisting in his refusal" that he may be dealt with under this section or under s. 85.

See also s. 85. The Court, instead of proceeding to punish an offender, may send the case to ■ Magistrate; and (s. 86) may discharge an offender on submission or apology.

■ "Judicial proceeding" (s. 228) means any proceeding in the course of which evidence is or may be legally taken. See ■ 4 (d), Criminal Procedure Code (c).

See also s. 480, Criminal Procedure Code.

Record in  
such cases.

84. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

(a) Act X of 1873.

(b) Act I of 1872.

(c) Act X of 1882.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

A RECORD, as prescribed by this section, must be made in all proceedings taken under s. 83.

See s. 481, Criminal Procedure Code (a).

85. If the Court considers that a person accused of any offence referred to in section eighty-three and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is for any other reason of opinion that the case should not be disposed of under section eighty-three, the Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Procedure where Court considers that the — should not be dealt with under section 83.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates' Act, 1877; and may sentence the offender to punishment — provided in the section of the Indian Penal Code under which he is charged.

THIS section provides the procedure to be followed when the Court considers that the case should not be dealt with by itself, but should be forwarded to a Magistrate. The Magistrate is to deal with the case



as provided by the Presidency Magistrates' Act, 1877 (a), and the offender is liable to the punishment provided in the Indian Penal Code for the offence charged.

The punishments for the offences referred to in ■ 83 are much heavier under the Penal Code than under that section.

But for the offences described in ss. 175 and 179, Indian Penal Code, proceedings should first be taken under s. 87. See notes to ■ 83 and 87.

See ■ 482, Criminal Procedure Code (b).

Discharge of  
offender ■  
submission or  
apology.

86. When the Court has, under section eighty-three or section eighty-five, punished an offender, or forwarded him to ■ Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

THE 'Court' in this section ■ the Small Cause Court before which the offence was committed. It may, *after* punishing or forwarding the offender to a Magistrate, discharge him or remit the punishment on his submitting to the order, or making an apology. Submission in the 1st, 2nd, 3rd and 4th instances ■ only be effected by producing and delivering up the document required, taking the oath ■ affirmation tendered, answering the question demanded, and signing the statement offered for signature. In the 5th instance only can ■ apology be accepted.

Where the Magistrate has dealt with and punished the offender, and he desires to submit or apologize, the application must be made to the Small Cause Court, which must communicate its order to the Magistrate that the necessary instructions may be given for the discharge of the offender, or the remission of the punishment.

See also s. 484, Criminal Procedure Code (b).

87. If any witness before the Small Cause Court refuses to answer such questions as are put

(a) Act IV of 1877.

(b) Act X of 1882.

to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section eighty-three or section eighty-five.

THIS section provides a summary remedy in the Small Cause Court for the offences described in ss. 175 and 179 of the Indian Penal Code. If, after punishment for these offences, the offender *persists in his refusal*, he may be dealt with either under s. 83 or s. 85. The punishment under these sections, ■ by a Magistrate under the Indian Penal Code, is in addition to any punishment awarded under this section.

See s. 485, Criminal Procedure Code (a).

88. Any person deeming himself aggrieved by an order under section eighty-three or section eighty-seven may appeal to the High Court, and the provisions of the Presidency Magistrates' Act, 1877, relating to appeals shall, so far as may be, apply to appeals under this section.

Appeal from orders under sections 83 & 87.

AN appeal lies from all orders passed under ss. 83 or 87. The sections of the Presidency Magistrates' Act, 1877 (b), relating to appeals ■ ss. 167 to 182.

See also s. 486, Criminal Procedure Code (a).

## CHAPTER XIII.

## MISCELLANEOUS.

Persons by  
whom process  
may be  
served.

89. Notice to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

THE following order has been made by the Small Cause Court under this section :—

When an attorney of the High Court at Calcutta, regularly practising in Calcutta, is employed under power-of-attorney duly filed in Court on behalf of a party to any suit or proceeding, such attorney may serve notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the said Court by the said Act, except summonses to defendants and writs of execution. Provided that the usual fees have first been paid (a).

Registers and  
returns.

90. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

THE High Court has prescribed the registers and returns of the judicial business of the Court, and an annual report and statements as submitted to that Court.

Court to fur-  
nish records,  
&c., called for  
by Local Gov-  
ernment —  
High Court.

91. The Small Cause Court shall comply with such requisitions as may from time to time be made by the Local Government or High Court for records, returns and statements, in such form and

---

(a) Order dated 19th July 1882.

manner as such Government or Court, ■ the case may be, thinks fit.

THE Local Government has approved of the returns of the judicial business of the Court directed to be kept up by the High Court, and has prescribed the financial returns to be observed by the Court (a). An annual report is made to Government showing the judicial business and the financial results. All annual reports are for the calendar year, January to December.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government. Holidays and vacations.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

THE Small Cause Court has ■ vacation, but a certain number of Christian and Native holidays scattered throughout the year are allowed. The list for each year is sanctioned by Government and published in the official Gazette in January of each year. Although the Court is closed for the transaction of general business on these days, the Judges hear and dispose of applications of ■ urgent character, and all judgment-debtors arrested in execution of decrees are brought before them for commitment and release, and such orders as may be necessary in the execution of decrees. See ss. 336 and 337 of the Code.

Excluding Sundays there are only ten days in the year on which summonses, processes and warrants may not be executed. See Rule 27.

For the holidays ordinarily allowed to the Court ■ Appendix (b).

93. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty- Certain persons exempted from arrest by Court.

(a) Government Resolution dated 25th April 1880.

(b) Appendix II.



fifth of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

THIS section applies to all Members of Council, whether of the Executive or Legislative Councils. Non-official Members of the Supreme and Local Legislative Councils are therefore exempt from arrest by the Small Cause Court during their term of office; but not after it has expired. 'Judge' includes an Acting Judge.

No suit to be  
upon decree  
of Court.

94. No suit shall lie on any decree of the Small Cause Court.

UNDER the repealed law a suit lay on a judgment of the Small Cause Court both in the Small Cause Court and in the High Court (a), but this is no longer the case.

See note (w) to s. 19; and note to s. 31.

See also *Bhavanishankar Shevakram v. Purnadri Kálidda* (b) the question of suits on judgments of foreign Courts and native Courts in India.

Place of  
imprison-  
ment.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf.

THE Local Government has appointed the Presidency Jail as the place of imprisonment for male debtors, and the Russa Jail as the place for female debtors (c).

Tender in suit  
for anything  
done under  
Act.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

THIS section provides for the tender of amends for anything done under this Act for which a suit has been brought. See note to s. 21.

It does not apply to any of the cases referred to in s. 78, 79 and 80.

Limitation of  
prosecution.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed.

SEE note to s. 21.

(a) *Jussowant Khan v. Kanyaloll Dey*, S. C. Ct. Rep., 1886.

(b) 6 I. L. R., Bom., 292.

(c) Bengal Government letter No. 1003D, dated 16th October 1882.

**THE FIRST SCHEDULE.***(See section 2.)***ENACTMENTS REPEALED.***A.—Charters of the Supreme Courts.*

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800.	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823.	Charter of the Supreme Court at Bombay.	Clause 50.

*B.—Acts of the Governor General in Council.*

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 ...	To amend Act IX of 1850	The whole.
XXVI of 1864 ...	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of ■ increased number of Judges of these Courts.	So much ■ has not been repealed.
I of 1875 ..	To regulate distresses for rents in the Presidency-towns.	The whole.
X of 1877 ■ ...	The Code of Civil Procedure	Section 8, para. 2.

*C.—Act of the Governor of Bombay in Council.*

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much ■ has not been repealed.

## THE SECOND SCHEDULE.

(See section 23.)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING  
TO COURT.

PRELIMINARY : Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*,  
except section 11.CHAPTER II.—Of the Place of suing, except sections 15 to 19  
(both inclusive), section 20, paragraph 4, sec-  
tions 22, 23 and 24 and section 25, paragraphs 2  
and 3.CHAPTER III.—Of Parties and their Appearances, Applications  
and Acts, except section 37, clause (b), and the  
last paragraph.CHAPTER IV.—Of the Frame of the Suit, except section 42 and  
section 44, rule aCHAPTER V.—Of the Institution of Suits, except section 53,  
clause (e), section 55, section 57, clause (b), and  
sections 58 and 62.CHAPTER VI.—Of the Issue and Service of Summons, except, in  
section 64, the words “and the copies or concise  
statements required by section 58 have been  
filed,” and sections 65, 66 and 86.CHAPTER VII.—Of the Appearance of the Parties and Conse-  
quence of Non-appearance.CHAPTER VIII.—Of Written Statements and Set-off, except sec-  
tions 110, 112 and 113.CHAPTER IX.—Of the Examination of the Parties by the Court,  
except section 119.CHAPTER X.—Sending for Records and Production, &c., of Docu-  
ments, sections 137 (except paragraph 2), 138,  
140 (except the proviso and the last six words),  
141 (except the third sentence), 142, 143  
and 145.

CHAPTER XI.—Settlement of issues, sections 150 and 151.

CHAPTER XII.—Disposal of the Suit at the first hearing, except  
sections 154 and 155.

CHAPTER XIII.—Of Adjournments.

THE SECOND SCHEDULE.—(*Continued.*)

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207 and 211 to 215 (both inclusive).

CHAPTER XVIII.—Of Costs.

CHAPTER XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of Payment into Court.

CHAPTER XXIV.—Of Requiring Security for Costs.

CHAPTER XXV.—Of Commissions, except section 396.

CHAPTER XXVII.—Suits by or against Government, or public officers.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except section 433.

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

CHAPTER XXXII.—Suits by and against Military Men.



**THE SECOND SCHEDULE.—(Continued.)**

## CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except — regards the attachment of immoveable property.

CHAPTER XXXV.—Interlocutory orders, sections 498, 499, 500 and 502.

### CHAPTER XXXVI.—Appointment of Receivers, section 503.

CHAPTER XXXVII.—Reference to Arbitration, except the provisions of section 522 as to appeals.

CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties,  
except so much of section 527, clause b,  
■ relates to immoveable property.

CHAPTER XLVI.—Of Reference to and Revision by High Court.

**CHAPTER XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).**

### THE THIRD SCHEDULE.

## FORMS.

## A.

(See section 53.)

*In the Small Cause Court for*

**A. B.** (Plaintiff)

**C. D.** (Defendant).

A. B. of \_\_\_\_\_, in the town of \_\_\_\_\_, maketh  
oath [or affirms] and saith that C. D. \_\_\_\_\_, of \_\_\_\_\_,  
is justly indebted to \_\_\_\_\_ in the sum of Rs. \_\_\_\_\_ for  
arrears of rent of the house and premises No. \_\_\_\_\_, situated  
at \_\_\_\_\_, in the town of \_\_\_\_\_, due for  
months, to wit from \_\_\_\_\_ to \_\_\_\_\_, at the rate of  
Rs. \_\_\_\_\_ per mensem.

Sworn [or affirmed] before me the                      day of                      188 .

*Judge [or Registrar].*

**THE THIRD SCHEDULE.—(Continued.)**

**B.**

*(See section 54.)*

*In the Small Cause Court for*

**FORM OF WARRANT.**

I hereby direct you to distrain the moveable property of *C. D.*, on the house and premises situate at No. , in the town of , for the sum of Rs. , and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated day of .

*(Signed and sealed.)*

To *E. F.*, *Bailiff and Appraiser.*

**C.**

*(See section 59.)*

*In the Small Cause Court for*

**FORM OF INVENTORY AND NOTICE.**

*(State particulars of property seized.)*

Take notice that I have this day seized the moveable property contained in the above inventory for the ■■■■ of Rs. , being the amount of months' rent due to *A. B.* at last, and that, unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated the day of 188 .

*(Signed) E. F.,*

To *C. D.*

*Bailiff and Appraiser.*

THE THIRD SCHEDULE.—(*Continued.*)

D.

(*See section 64.*)*In the Small Cause Court for*

Take notice that we have appraised the moveable property seized on the                      day of                      , under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [or upon                      on your behalf, *as the case may be*] under date the                      , and that the said property will be sold on the                      [two clear days at least after the date of the notice] at                      pursuant to the provisions of the said Act. Dated this                      day of                      188                      .

(Signed) *E. F.,**G. H.,**Bailiffs and Appraisers.*To *C. D.*

E.

(*See section 66.*)*In the Small Cause Court for*

## SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for		Affidavit and warrant to distrain.	Order to sell.	Commission.	Total.
Rs.	Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1 and under 5 ...		0 4 0	0 8 0	0 8 0	1 4 0
5        "        10 ...		0 8 0	0 8 0	1 0 0	2 0 0
10       "        15 ...		0 8 0	0 8 0	1 8 0	2 8 0
15       "        20 ...		0 8 0	1 0 0	2 0 0	3 8 0
20       "        25 ...		0 12 0	1 0 0	2 8 0	4 4 0
25       "        30 ...		1 0 0	1 0 0	3 0 0	5 0 0
30       "        35 ...		1 0 0	1 0 0	3 8 0	■ ■ 0
35       "        40 ...		1 0 0	1 8 0	4 0 0	6 8 0
40       "        45 ...		1 4 0	2 0 0	4 8 0	7 12 0
45       "        50 ...		1 8 0	2 0 0	5 0 0	■ 8 0
50       "        60 ...		2 0 0	2 0 0	6 0 0	10 0 0
60       "        80 ...		2 8 0	2 8 0	6 8 0	11 8 0
80       to        100 ...		3 0 0	3 0 0	7 0 0	13 0 0
Upwards of 100 —		3 0 0	■ 0 0	7 per centum	

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons are kept in charge of property distrained, four annas per day must be paid per man.

## THE FOURTH SCHEDULE.

*(See section 72.)*

## FEEs FOR SUMMONS AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons.			Fee for other processes.		
Rs.	Rs.	Rs.	A.	P.	Rs.	A.	P.
0	10	0	2	0	0	2	0
10	20	0	4	0	0	4	0
20	50	0	8	0	0	8	0
50	100	1	0	0	1	0	0
100	200	1	4	0	2	0	0
200	300	1	8	0	3	0	0
300	400	1	12	0	4	0	0
400	500	2	0	0	5	0	0
500	600	2	4	0	6	0	0
600	700	2	8	0	7	0	0
700	800	2	12	0	8	0	0
800	900	3	0	0	9	0	0
900	1,000	3	4	0	10	0	0
1,000	1,100	3	6	0	10	8	0
1,100	1,200	3	8	0	11	0	0
1,200	1,300	3	10	0	11	■	0
1,300	1,400	3	12	0	12	0	0
1,400	1,500	3	14	0	12	8	0
1,500	1,600	4	0	0	13	0	0
1,600	1,700	4	■	0	13	8	0
1,700	1,800	4	4	0	14	0	0
1,800	1,900	4	■	0	14	8	0
1,900	2,000	4	8	0	15	0	0



# PART III.

## THE CODE OF CIVIL PROCEDURE.

### NOTIFICATION.\*

*Chapters and Sections of the Code of Civil Procedure extended, omitted, or applied with modifications to the Court of Small Causes of Calcutta, with the sanction of the Local Government, under section 23 of Act XV of 1882 "The Presidency Small Cause Courts Act, 1882."*

Chapters and Sections.	Whether extended or omitted.	Modifications, if any.
<b>PRELIMINARY.</b>		
Section 2 ...	Extended ...	For the last portion of the interpretation of 'decree,' commencing after the words "decides the suit" read "An order rejecting a plaint or determining any question mentioned or referred to in section 244 is within this definition." And omit the interpretation of 'judgment.'
<b>CHAPTER I.</b>	Ditto ...	Except <i>Explanation IV</i> of section 13.
<b>CHAPTER II.</b>		
Section 20 ...	Ditto ...	Except the last two paragraphs.
" 21 ...	Omitted.	
" 25 ...	Extended.	
<b>CHAPTER III.</b>		
Sections 26, 27, 28, 29, 30 and 31 ...	Ditto ...	

\* Calcutta Gazette, 14th June 1882 and 21st March 1883.

*Portions of the Code extended, &c., to the Court of Small Causes of Calcutta.*

Chapters and Sections.	Whether extended or omitted.	Modifications, if any.
<b>CHAPTER III—contd.</b>		
Section 32 ...	Extended ...	Omitting the words "on or before the first hearing" in the first paragraph, and the words "in manner hereinafter mentioned" in the fifth paragraph.
" 33 ...	Ditto ...	The words "if the Court shall so order" being added at the end of the section.
" 34 ...	Ditto ...	Omitting the words "and in all cases before the first hearing."
" 35 ...	Ditto ...	Except the last paragraph.
" 36 ...	Ditto ...	Except the words "or appeal."
" 37 ...	Ditto ...	
" 38 ...	Ditto ..	Except the words "or appeal."
Sections 39 and 40 ...	Omitted.	
Section 41 ...	Extended.	
<b>CHAPTER IV.</b>		
Section 43 ...	Ditto ...	Omit the words "before the first hearing."
" 44, rule b ...	Ditto.	
" 45 ...	Ditto ..	But after the figures '44' add the words "as extended to the Court of Small Causes of Calcutta;" and omit the words "before the first hearing."
" 46 ...	Ditto. ...	Omit the words "before the first hearing."
" 47 ...	Ditto ..	Except the last paragraph.
<b>CHAPTER V.</b>		
Sections 48 and 49 ..	Ditto.	
Section 50 ...	Ditto ...	Except the third paragraph.
" 51 —	Ditto ...	Omitting in the first paragraph the words "proved to the satisfaction of the Court to be."
" 52 —	Ditto.	
" 53 —	Ditto ...	In the first paragraph omit the words "and at or before the first hearing," and the words "returned for amendment within a time to be fixed by the Court" and the words "then and there."
" 54 ...	Ditto ...	In clause (b) for the word 'stamp-paper' read the word 'stamp,' and omit clause (d).
■ 56 ...	Ditto.	
Sections 57, 59 and 60	Omitted.	

*Portions of the Code extended, &c., to the Court of Small Causes of Calcutta.*

Chapters and Sections.	Whether extended or omitted.	Modifications, if any.
<b>CHAPTER V—<i>contd.</i></b>		
Section 61 ...	Extended ...	Omitting the words “when the plaint was presented and had at the same time delivered a copy of the instrument to be filed with the plaint.”
“ 63 ...	Omitted.	
<b>CHAPTER VI.</b>		
Section 64 ...	Extended ...	For the word ‘registered’ read the word ‘filed.’ Omit the last paragraph.
“ 67 ...	Ditto.	
“ 68 ...	Omitted.	
Sections 69, 70, 71 and 72 ...	Extended.	
Section 73 ...	Ditto ...	For the words “a copy thereof” read the word ‘it.’
Sections 74, 75, 76 and 77 ...	Ditto.	
“ 78, 79, 80 and 81 ...	Omitted.	
Section 82 ...	Extended ...	Except the first seven words, and the figures ‘80.’
Sections 83, 84, 85, 87, 88, 89, 90, 91 and 92 ...	Ditto.	
Section 93 ...	Ditto ...	Except the second paragraph.
“ 94 ...	Ditto ...	Omitting the word ‘hereinbefore.’
“ 95 ...	Ditto.	
<b>CHAPTER VII.</b>		
Section 96 ...	Ditto ...	Before the word ‘pleaders’ insert the words “agents or.”
“ 97 ...	Ditto.	
“ 98 ...	Ditto ...	Omitting the words “for reasons to be recorded under his hand.”
“ 99 —	Ditto.	
“ 99A ...	Omitted.	
“ 100 ...	Extended ...	Except in clause (b) for the word ‘shall’ read the word ‘may.’
Sections 101, 102, 103, 104, 105 and 106 ...	Ditto.	
Section 107 ...	Ditto ...	Omitting the figures and words “66 or section.”
Sections 108 and 109	Ditto.	

*Portions of the Code extended, &c., to the Court of Small Causes of Calcutta.*

Chapters and Sections.	Whether extended or omitted.	Modifications, if any.
<b>CHAPTER VIII.</b>		
Section 111 ..	Extended ...	Omitting the words "at the first hearing of the suit, but not afterwards unless permitted by the court."
Sections 114 and 115	Ditto.	
Section 116 ..	Ditto ...	Except the second paragraph.
<b>CHAPTER IX.</b>		
Section 117 ...	Ditto ...	Except the first seven and the last eight words.
" 118 ...	Ditto ...	Except the first twelve words.
" 120 ...	Ditto.	
<b>CHAPTER X.</b>		
Section 137 ...	Ditto.	
" 138 ...	Ditto ...	Omitting the word 'first,' and the words "at any time before such hearing."
" 140 ...	Ditto ...	Omitting the word 'first.'
" 141 ...	Ditto ...	Omitting the word 'first,' in the last paragraph.
" 142 ...	Omitted.	
" 143 ...	Extended ...	Omitting the words and figures "notwithstanding anything contained in sections 62, 141, and 142."
" 145 ...	Ditto.	
<b>CHAPTER XI.</b>		
Section 150 ...	Ditto ...	Except clause (c).
" 151 ...	Ditto.	
<b>CHAPTER XII.</b>		
In the title ...	.....	Omit the words "at the first hearing."
Section 152 ..	Extended ...	Omitting the words "at the first hearing of a suit."
" 153 ..	Ditto.	
<b>CHAPTER XIII.</b>		
Section 156 ...	Ditto ...	Except the last paragraph.
Sections 157 and 158	Ditto.	
<b>CHAPTER XIV.</b>		
Section 159 ..	Ditto ...	Omitting the words "whether it be for the settlement of issues only or for the final disposal of the suit," and the words "before the day fixed for such settlement or disposal, as the case may be."



*Portions of the Code extended, &c., to the Court of Small Causes of Calcutta.*

Chapters and Sections.	Whether extended or omitted.	Modifications, if any.
<b>CHAPTER XIV—contd.</b>		
Section 160 ...	Extended ...	For the words "before the summons is granted and within a period to be fixed by the court pay into the court" read the word 'pay.'
" 161 ...	Ditto ...	Except the words "so paid into court."
" 162 ...	Ditto ...	Except in the first paragraph, omit the words "or to such officer as it appoints in this behalf;" and the words "into court." And except in the second paragraph, the words "into court;" and for the word 'deposit' read the word 'payment.'
Sections 163, 164, 165, 166, 167, 171 and 172 ...	Ditto.	
Section 173 ...	Ditto ...	Except for the words "shall depart" read the words "shall cease to attend while bound ■ to do."
" 174 ...	Ditto ...	Except for the word 'departs' read the words "ceases to attend."
Sections 176, 177, and 178 ..	Ditto.	
<b>CHAPTER XV.</b>		
Section 179 ...	Ditto.	
" 180 ...	Ditto ...	Except the last paragraph.
" 181 ...	Ditto.	
" 192 ...	Ditto ...	Except the last four words of the first paragraph.
" 193 ...	Ditto ...	Except for the word 'departed' read the words "ceased to attend."
<b>CHAPTER XVI.</b>		
Section 194 ...	Ditto.	
Sections 195 and 196	Ditto.	
Section 197 ...	Ditto.	
<b>CHAPTER XVII.</b>		
Sections 198 and 199	Ditto.	
" 203 and 205	Omitted.	

*Portions of the Code extended, &c., in the Court of Small Causes of Calcutta.*

Chapters and Sections.	Whether extended or omitted.	Modifications, if any.
<b>CHAPTER XVII—contd.</b>		
Section 206 ...	Extended ...	But only the following portion of the third paragraph:—"If any clerical or arithmetical error be found in the decree, the court shall, of its own motion or on that of any of the parties, amend the decree . . . . provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment." The rest of the section being omitted.
Sections 208 and 209	Ditto.	
Section 210 ...	Ditto ...	Except the last two paragraphs.
" 215A ...	Omitted.	
" 216 ...	Extended.	
" 217 ...	Ditto ...	For the word 'judgment' substitute the word 'proceedings.'
<b>CHAPTER XVIII.</b>		
Sections 218 and 219	Ditto.	
Section 220 ...	Ditto ...	Except the second paragraph.
" 221 ...	Ditto.	
" 222 ...	Omitted.	
<b>CHAPTER XIX.</b>		
Section 230 ...	Extended.	
" 231 ...	Ditto.	
Sections 232, 233 and 234 ...	Ditto.	
Sections 235 and 236	Omitted.	
Section 243 ...	Extended.	
" 244 ...	Ditto ...	Except clauses (a), (b), and the words "any other" in clause (c); and the last paragraph.
" 245 ...	Omitted.	
Sections 246, 247	Extended.	
Section 248 ...	Ditto ...	Except clause (a) and the first paragraph of the proviso.
Section 249, 250, 251 and 252 ...	Ditto.	
Section 253 ...	Omitted.	
" 254 ...	Extended.	
" 255 ...	Omitted.	
Sections 256, 257, 257A and 258 ...	Extended.	

*Portions of the Code extended, &c., to the Court of Small Causes of Calcutta.*

Chapters and Sections.	Whether extended or omitted.	Modifications, if any.
<b>CHAPTER XIX—contd.</b>		
Section 259 ...	Extended ...	Except the words "or for any share in a specific moveable, or for the recovery of a wife;" and the words "or share."
Sections 266, 267, 268, 269, 270, 271 and 272 ...	Ditto.	
Section 273 ...	Ditto ..	The first paragraph only, the rest being omitted.
Sections 275, 276, 277, 278, 279, 280, 281 and 282..	Ditto.	
Section 283 ...	Omitted.	
Sections 284 and 285	Extended.	
Section 286 ..	Ditto ...	For the words "in manner hereinafter mentioned" read the words "of which due notice shall be given."
Sections 287, 288, and 289 ...	Omitted.	
Section 290 ...	Extended ...	For the latter portion of the section commencing from and inclusive of the words "at least thirty days" to the end read the words "at least ten days calculated from the date on which the attachment was made."
■ 291 ...	Ditto ...	Omitting the first portion of the section from the commencement down to and inclusive of the words "consents to waive it." Also omitting the last four words.
Sections 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 328, 329 and 330 ...	Ditto.	
■ 331, 332 and 333 ...	Omitted.	
■ 336 and 337	Extended.	
Section 338 ...	Ditto ...	For the word 'monthly' read the word 'daily.'

*Portions of the Code extended, &c., to the Court of Small Causes of Calcutta.*

Chapters and Sections.	Whether extended or omitted.	Modifications, if any.
CHAPTER XIX— <i>contd</i>		
Section 339 ...	Extended ...	In the first paragraph for the words "the Judge thinks" read the words "shall be." In the second paragraph for the word 'monthly' read the word 'daily.' In the third paragraph for the word 'monthly' where it first occurs read the word 'daily;' and omit the word 'monthly' in the second place where it occurs.
" 340 ...	Ditto.	
" 341 ...	Ditto ..	Excepting clause (e), and in the proviso for the words "third and fifth" read the words "and third."
" 342 ..	Ditto.	
" 343 ...	Ditto ...	Except the last paragraph.
CHAPTER XXI ...	Ditto ...	Except section 371.
CHAPTER XXII.		
Sections 373 and 374 ..	Ditto.	
Section 375 ...	Ditto ...	Except from and inclusive of the words "and the Court shall pass ■ decree," to the end.
CHAPTER XXIII ...	The whole chapter extended.	
CHAPTER XXIV.		
Section 380 ...	Extended.	
Sections 381 and 382 ..	Ditto.	
CHAPTER XXV ...	Ditto.	
CHAPTER XXVII.		
Sections 416, 417, 418, 419, 420, 421, 422, 423 and 424 ...	Ditto.	
Section 425 ..	Ditto ..	Except the last nine words.
" 426 ..	Ditto ...	Except for the word 'register' substitute the word 'record.'
Sections 427, 428 and 429 ...	Ditto.	
CHAPTER XXVIII ...	Ditto.	
CHAPTER XXIX ...	The whole chapter extended.	
CHAPTER XXX ...	Ditto.	



*Portions of the Code extended, &c., to the Court of Small Causes of Calcutta.*

Chapters and Sections.	Whether extended or omitted.	Modifications, if any.
CHAPTER XXXI. Sections 440 and 441 ..	Extended.	For the words "taken off the file" read the word 'rejected;' and for the word 'presented' read the word 'filed.'
Section 442 ...	Ditto ...	
Sections 443 to 464 (both inclusive) ..	Ditto.	
CHAPTER XXXII ...	The whole chapter extended.	
CHAPTER XXXIII ...	Ditto.	
CHAPTER XXXIV ...	Extended.	
CHAPTER XXXV ...	Ditto.	
CHAPTER XXXVI ...	The whole chapter omitted.	
CHAPTER XXXVII. Section 506 ...	Extended ...	
Sections 507 to 515 (both inclusive) ..	Ditto.	Omitting in the first paragraph the words "specially authorized in writing in this behalf;" and omitting the second paragraph.
Section 516 ...	Ditto ...	
Sections 517 to 526 (both inclusive) ..	Ditto.	
CHAPTER XXXVIII	Ditto.	Omitting from and inclusive of the words "together with any depositions" to the end.
CHAPTER XLVI ...	The whole chapter extended.	
CHAPTER XLIX. Sections 640, 641, 642, and 643 ...	Extended.	
Section 644 ...	Omitted.	
" 645 ...	Extended.	
" 645A ...	Omitted.	
Sections 646 to 651 (both inclusive) -	Extended.	

The above is intended to deal only with those portions of the Code of Civil Procedure specially extended to the Presidency Small Cause Court of Calcutta by section 23 of the Presidency Small Cause Courts Act, 1882.

**PART III.**  
**THE CODE OF CIVIL PROCEDURE,**  
**ACT XIV OF 1882.\***

*As extended to the Presidency Court of Small Causes  
of Calcutta.*

Omissions are indicated by *asterisks*, modifications by *italics*.

*An Act to consolidate and amend the laws relating  
to the Procedure of the Courts of Civil Judica-  
ture.*

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature ; It is hereby enacted as follows:—

Preamble.

**PRELIMINARY.**

1. This Act may be cited as “The Code of Civil Procedure :” and it shall come into force on the first day of June, 1882.

Short title.  
Commence-  
ment.

2. In this Act, unless there be something repugnant in the subject or context—

Interpreta-  
tion-clause.

‘chapter’ means a chapter of this Code :

‘chapter :’

---

\* Received the assent of the Governor-General of India in Council on 17th March 1882: and came into force in the Presidency Small Cause Courts on 1st July 1882.

- ‘district:’      ‘district’ means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a ‘District Court’), and includes the local limits of the ordinary original civil jurisdiction of a High Court : every Court of a grade inferior to that of a District Court and every Court of Small Causes shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court :
- ‘District Court:’
- ‘pleader:’      ‘pleader’ means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court:
- ‘Government Pleader:’      ‘Government Pleader’ includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader:
- ‘Collector:’      ‘Collector’ means every officer performing the duties of a Collector of land revenue:
- ‘decree:’      ‘decree’ means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a complaint, or determining any question mentioned or referred to in section 244, \* \* \* is within this definition.
- \* \* \* \*
- ‘order:’      ‘order’ means the formal expression of any decision of a Civil Court which is not a decree as above defined:
- \* \* \* \*
- ‘Judge:’      ‘Judge’ means the presiding officer of Court:

‘judgment-debtor’ means any person against whom a decree or order has been made: ‘judgment-debtor:’

‘decree-holder’ means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred: ‘decree-holder:’

‘written’ includes printed and lithographed, and ‘writing’ includes print and lithography: ‘written:’

‘signed’ includes marked, when the person making the mark is unable to write his name; it also includes stamped with the name of the person referred to: ‘signed:’

‘foreign Court’ means a Court situate beyond the limits of British India and not having authority in British India nor established by the Governor-General in Council: ‘foreign Court:’

‘foreign judgment’ means the judgment of a foreign Court: ‘foreign judgment:’

‘public officer’ means a person falling under any of the following descriptions (namely):— ‘public officer.’

every Judge ;

every covenanted servant of Her Majesty ;

every commissioned officer in the military or naval forces of Her Majesty while serving under Government ;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;



every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;

every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

' Govern-  
ment.'

And in any part of British India in which this Code operates, 'Government' includes the Government of India as well as the Local Government.

Enactments  
repealed.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed and framed hereunder.

And when in any Act, Regulation or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII of 1859, Act No. XXIII of 1861, or the "Code of Civil Procedure," or to Act No. X of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

References  
in previous  
Acts.

Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of June 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Saving of  
procedure in  
suits insti-  
tuted before  
1st June,  
1882.

Every appeal pending on the twenty-ninth day of July, 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date ; and every order passed before the same day, purporting to transfer a case to a Collector under Act No. X of 1877, section 320, and every notification published before the same day, purporting to be issued under Act No. X of 1877, section 360, shall be deemed to have been respectively passed and issued in accordance with law.

Appeals  
pending on  
29th July,  
1879.

THIS section is extended to the Presidency Small Cause Courts by this Code, s. 8.

8. Save as provided in sections 3, 25, 86, 223, 225, 386, and Chapter XXXIX, this Code shall not extend to any suit or proceeding in any Court of

Presidency  
Small Cause  
Courts.

Small Causes established in the towns of Calcutta, Madras and Bombay.

But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code or any part thereof, except so far as relates to appeals and reviews of judgment.

THIS section extends certain sections of the Code to the Presidency Small Cause Courts independently of the Presidency Small Cause Courts Act, 1882.

## PART I.

### OF SUITS IN GENERAL.

## CHAPTER I.

### OF THE JURISDICTION OF THE COURTS AND *Res Judicata*.

No person exempt from jurisdiction by reason of descent or place of birth.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

Pending suits.

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having

jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor General in Council and having like jurisdiction, or before Her Majesty in Council.

*Explanation.*—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

13. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. *Res judicata.*

*Explanation I.*—The matter above referred to must, in the former suit, have been alleged by one party, and either denied or admitted, expressly or impliedly, by the other.

*Explanation II.*—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

*Explanation III.*—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

\*

*Explanation V.*—Where persons litigate *bonâ fide* in respect of a private right claimed in common



for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

*Explanation VI.*—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record ; but such presumption may be removed by proving the want of jurisdiction.

When  
foreign judgment  
no bar  
to suit in  
British India.

14. No foreign judgment shall operate as a bar to a suit in British India—

(a) if it has not been given on the merits of the case :

(b) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India :

(c) if it is in the opinion of the Court before which it is produced contrary to natural justice :

(d) if it has been obtained by fraud :

(e) if it sustains a claim founded on a breach of any law in force in British India.

## CHAPTER II.

### OF THE PLACE OF SUING.

■                    \*                    ■                    \*

Power to  
stay proceedings  
where  
all defendants  
do not  
reside within  
jurisdiction.

20. If a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any

defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

■            \*            ■            ■

SEE s. 18 of the Act.

25. The High Court or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter.

Transfer of  
suits.

For the purposes of this section, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

THIS section is extended to the Presidency Small Cause Courts by this Code, s. 8.

## CHAPTER III.

OF PARTIES AND THEIR APPEARANCES, APPLICATIONS  
AND ACTS.

Persons who  
may be joined  
■ plaintiffs.

26. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs.

Court may  
substitute or  
add plaintiff  
for or to plain-  
tiff suing.

27. Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, if satisfied that the suit has been so commenced through ■ *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as the Court thinks just.

Persons who  
may be joined  
as defendants.

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

29. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundís and promissory notes.

Joinder of parties liable on same contract.

30. Where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct.

One party may sue or defend on behalf of all in same interest.

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Suit not to fail by reason of misjoinder.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

32. The Court may, ■ \* upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out ;

Court may dismiss or add parties.

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant or that any defendant be made a plain-



tiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Consent of person added as plaintiff or next friend.

No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent thereto.

Parties to suits instituted or defended under section 30.

Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

Defendants added to be served.

All parties whose names are so added as defendants shall be served with a summons, \* and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons.

Conduct of suit.

The Court may give the conduct of the suit to such plaintiff as it deems proper.

Where defendant added, plaintiff to amend.

33. Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants *if the Court shall so order*.

Time for taking objections to non-joinder or misjoinder.

34. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and any such objection not so taken shall be deemed to have been waived by the defendant.

35. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding under this Code ; and in like manner when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any such proceeding.

Each of several plaintiffs or defendants may authorize any other to appear, &c., for him.

■       ■       ■       \*

*Recognized Agents and Pleaders.*

36. Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party to a suit \* in such Court, may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Appearances, &c., may be in person, by recognized agent or by pleader.

Provided that any such appearance shall be made by the party in person, if the Court so direct.

- UNDER this section only the party in person, or a recognized agent or a pleader duly appointed, can appear. Section 37 defines 'recognized agents.'

37. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

Recognized agents.

(a) persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties ;

Persons holding powers-of-attorney from parties out of jurisdiction.

Persons carrying on trade or business for parties out of jurisdiction.

(c) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

THIS section defines 'recognized agents.' They are of two classes only: (1) persons holding general powers-of-attorney from *non-resident* parties; (2) persons carrying on trade or business for and in the names of *non-resident* parties, and provided the appearance is in connection with such trade or business and not otherwise, and no other agent is expressly authorized to appear and act.

See Rule 9.

\* \* \* \*

Service of process on recognized agent.

38. Processes served on the recognized agent of a party to a suit \* ■ shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

UNDER this section processes served on any of the 'recognized agents' mentioned in s. 37 shall be ■ effectual as if served on the party in person, unless for any good reason th Court should think otherwise. ■

See also Rule 10.

■ \* \* ■

Agent to receive process.

41. Besides the recognized agents described in section 37, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in Court.

His appointment to be in writing and to be filed in Court.

THIS section has reference to agents, other than 'recognized agents,' appointed to accept service of process merely and does not entitle the agent to appear and act for a party. The appointment may be special or general and must be in writing.

## CHAPTER IV.

### OF THE FRAME OF THE SUIT.



43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action ; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Suit to include whole claim.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Relinquishment of part of claim.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies ; but if he omits (except with the leave of the Court obtained ■ \*) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

Omission to sue for one of several remedies.

For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.



*Illustration.*

*A* lets a house to *B* at ■ yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. *A* sues *B* only for the rent due for 1882. *A* shall not afterwards sue *B* for the rent due for 1881.

■                      \*                      \*                      ■

Claims by or  
against  
executor,  
adminis-  
trator or  
heir.

*Rule b.*—No claim by or against an executor, administrator or heir as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Plaintiff may  
join several  
causes of  
action.

45. Subject to the rules contained in Chapter II and in section 44 (*as extended to the Court of Small Causes of Calcutta*) the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly, may unite such causes of action in the same suit.

Court may  
order separa-  
tion.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time ■                      \*                      \*                      \* of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

46. Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may at any time, \* ■ ■ ■ ■ ■ Defendant may apply to confine suit.  
or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one suit.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just. Court on hearing application may exclude some causes and order amendment.  
\* ■ ■ ■ \*

## CHAPTER V.

### OF THE INSTITUTION OF SUITS.

48. Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf. Suits to be commenced by plaint.

49. The plaint must be distinctly written in the language of the Court : provided that if such language is not English, the plaint may (with the Language of plaint.

permission of the Court) be written in English; but in such case, if the defendant so require, ■ translation of the plaint into the language of the Court shall be filed in Court.

SEE Rules 11 and 13.

Particulars  
to be con-  
tained in  
plaint.

50. The plaint must contain the following particulars;

(a) the name of the Court in which the suit is brought ;

(b) the name, description and place of residence of the plaintiff ;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) a plain and concise statement of the circumstances constituting the cause of action and where and when it arose;

(e) a demand of the relief which the plaintiff claims; and

(f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

In money-  
suits.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

■ ■ ■ ■ ■

Where plain-  
tiff sues as  
representa-  
tive.

When the plaintiff sues in ■ representative character, the plaint should show, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute a suit concerning it.

#### *Illustrations.*

(a.) A sues as B's executor. The plaint must state that A has proved B's will.

(b.) *A* sues ■ *C*'s administrator. The plaint must state that *A* has taken out administration to *C*'s estate.

(c.) *A* sues as guardian of *D*, ■ Muhammadan minor. *A* is not *D*'s guardian according to Muhammadan law and usage. The plaint must state that *A* has been specially appointed *D*'s guardian.

The plaint must show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Defendants' interest and liability to be shown.

*Illustration.*

*A* dies, leaving *B* his executor, *C* his legatee, and *D* a debtor to *A*'s estate. *C* sues *D* to compel him to pay his debt in satisfaction of *C*'s legacy. The plaint must show that *B* has causelessly refused to sue *D*, or that *B* and *D* have colluded for the purpose of defrauding *C*, or other such circumstances rendering *D* liable to *C*.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaint must show the ground upon which exemption from such law is claimed.

Grounds of exemption from limitation-law.

FOR forms of plaints and causes of action see Appendix C.

51. The plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person ■ \* \* acquainted with the facts of the case:

Plaints to be signed and verified.

Provided that if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

52. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that ■ to those matters he believes it to be true.

Contents of verification.



Verification  
to be signed  
and attested.

The verification shall be signed by the person making it.

FOR form of verification see Rule 12.

When plaint  
may be reject-  
ed or amend-  
ed.

53. The plaint may, at the discretion of the Court  
■ ■ ■ be rejected ■ or amended ■  
upon such terms as to the payment of costs occa-  
sioned by the amendment as the Court thinks fit—

(a) if it does not state correctly and without pro-  
lixity the several particulars hereinbefore required  
to be specified therein; or

(b) if it contains any particulars other than those  
so required; or

(c) if it is not signed and verified as hereinbefore  
required; or

(d) if it does not disclose a cause of action; or

■ \* \* \*

(f) if it is wrongly framed by reason of nonjoinder  
or misjoinder of parties, or because the plaintiff has  
joined causes of action which ought not to be joined  
in the same suit:

Proviso.

Provided that a plaint cannot be altered so ■ to  
convert a suit of one character into ■ suit of another  
and inconsistent character.

Attestation  
of amend-  
ment.

When a plaint is amended, the amendment shall  
be attested by the signature of the Judge.

When plaint  
shall be re-  
jected.

54. The plaint shall be rejected in the following  
cases :—

(a) if the relief sought is undervalued, and the  
plaintiff, on being required by the Court to correct  
the valuation within a time to be fixed by the Court,  
fails to do so :

(b) if the relief sought is properly valued, but  
the plaint is written upon paper insufficiently

stamped, and the plaintiff, on being required by the Court to supply the requisite stamp \* within a time to be fixed by the Court, fails to do so:

(c) if the suit appears from the statement in the plaint to be barred by any positive rule of law:

\*                      ■                      \*                      ■

56. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

When rejection of plaint does not preclude presentation of fresh plaint.

\*                      \*                      \*                      \*

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court. \* \*

Suits on lost negotiable instruments.

SEE Appendix L. 20.

## CHAPTER VI.

### OF THE ISSUE AND SERVICE OF SUMMONS.

#### *Issue of Summons.*

64. When the plaint has been *filed* ■                      \*  
a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

Summons.

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the

Judge or such officer as he appoints, and shall be sealed with the seal of the Court

SEE Rules 13, 14, 15, 16 and 17.

No party to be ordered to appear in person unless resident

67. No party shall be ordered to appear in person unless he resides

(a) within the local limits of the Court's ordinary original jurisdiction, or

within 50, or where there is railway, 200 miles.

(b) without such limits and at a place less than fifty, or where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the court-house.

SEE also s. 18, cl. (a), of the Presidency Small Cause Courts Act and Rule 17.

Fixing day for appearance of defendant.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant and the time necessary for the service of the summons ; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

AS to the ordinary returnable date of summons see Rules 15 and 16.

Summons to order defendant to produce documents required by plaintiff or relied on by defendant.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

On issue of summons for final disposal defendant to be directed to produce his witnesses.

ALL summonses are for the final disposal of the suit.

### *Service of Summons.*

72. The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates.

Delivery of summons for service.

73. Service of the summons shall be made by delivering or tendering it signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Mode of service.

74. When there are more defendants than one, service of the summons shall be made on each defendant :

Service on several defendants.

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made, unless the Court directs otherwise, either (a) on one defendant for himself and for the other defendants, or (b) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction, of such business.

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

Service to be on defendant in person when practicable, or his agent.



Service  
on agent  
by whom  
defendant  
carries on  
business.

76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

For the purpose of this section, the master of a ship is the agent of his owner or charterer.

Service  
on agent  
in charge,  
in suits for  
immoveable  
property.

77. In a suit to obtain relief respecting, or compensation for wrong to, immoveable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

WHEN a summons cannot be served in any of the ways laid down in ss. 74, 75, 76, or 77, it may be served as provided in Rule 18.

See also Rules 19, 20 and 27.

■ \* \* \*

Examination  
of serving-  
officer.

82. ■ ■ \* The Court shall examine the serving-officer on oath touching his proceedings, and may make such further enquiry in the matter as it thinks fit ; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Substituted  
service.

Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house,

and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided, or in such other manner as the Court thinks fit.

SUBSTITUTED service is only allowed when a summons cannot be served in any of the modes provided by ss. 74, 75, 76, 77, or Rule 18.

See also Rule 27.

83. The service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Effect of substituted service.

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

When service substituted, time for appearance to be fixed.

85. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

Service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

FOR fees payable on summonses sent to other Courts see Appendix I.

Service, with-  
in Presiden-  
cy-towns &  
Rangoon, of  
process issu-  
ed by Provin-  
cial Courts.

86. Whenever any process issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such town, it shall be sent to the Court of Small Causes within whose jurisdiction the process is to be served,

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself,

and shall then return the process to the Court from which it issued.

THIS section is extended to the Presidency Small Cause Court by this Code, s. 8.

Service on  
defendant in  
jail.

87. If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the jail and by the defendant.

Procedure if  
jail be in  
different  
district.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

IF a defendant or witness is confined in jail, and his evidence is required in a suit, he may be produced as a witness in Court under

the Prisoner's Testimony Act, XV of 1869, ss. 1 and 7. The application should be in writing, and should be made to the Bench before which the suit is pending a reasonable time before the hearing.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India and has no agent to accept service.

WHERE a registered letter was refused by the addressee and came back to the sender, and was afterwards produced in Court;—Held, that it might be perfectly true that the defendant did not see the contents of the letter; but if so, his ignorance of it was entirely the consequence of his own act. The letter was forwarded to him by post duly registered, and it must be presumed that it was tendered to him. He therefore cannot take advantage of his refusal to take it. *Lootf Ali Meah v. Pearee Mohun Roy*, 16 Suth. W. R. (Civ. R.), 223.

See Rule 23.

90. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of the service.

Service through British Resident or Agent of Government.

91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of such rank which entitles him to such mark of consideration.

Substitution of letter for summons.



The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

Mode of sending such letter.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

### *Service of Process.*

Process to be served at expense of party issuing.

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

■ \* \* \* \* ■

Notices and orders in writing how served.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner provided for the service of summons.

### *Postage.*

Postage.

95. Postage, where chargeable on any notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded :

Provided that the Local Government, with the previous sanction of the Governor-General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

## CHAPTER VII.

## OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court-house in person or by their respective *agents or* pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

Parties to appear on day fixed in summons for defendant to appear and answer.

97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed :

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing.

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

Proviso.

98. If on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge ■ \* otherwise directs.

If neither party appears, suit to be dismissed.

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring ■ fresh suit ; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the

In such case plaintiff may bring fresh suit.

or Court may  
restore suit  
to its file.

service of the summons, or for his non-appearance, the case may be, the Court shall pass an order to set aside the dismissal and appoint a day for proceeding with the suit.

SEE Rules 38, 39, 40, 41, 42, 44, 45 and 47.

■                      ■                      \*

Procedure  
if only  
plaintiff  
appears,

when sum-  
mons duly  
served,

when sum-  
mons not  
duly served,

when sum-  
mons served,  
but not in  
due time.

100. If the plaintiff appears and the defendant does not appear, the procedure shall be as follows :

(a) if it is proved that the summons was duly served, the Court may proceed *ex-parte* :

(b) if it is not proved that the summons was duly served, the Court may direct a second summons to be issued and served on the defendant :

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant. .

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

UNDER Rule 12 of the Rules of Practice of the High Court of 1st May, 1875, the Court has discretion ■ to granting a second summons : Held that the Court is bound to enquire into the circumstances under which it is applied for, and where there has been great and unexplained laches, it should be refused. *Gour Churn Soor v. Peary Lall Paul*, 15 B. L. R., Apx., 12.

Procedure  
where de-  
fendant  
appears ■  
day of ad-

101. If the Court has adjourned the hearing of the suit *ex-parte*, and the defendant, at or before such hearing, appears and assigns good cause for

his previous non-appearance, he may, upon such terms as the Court directs ■ to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

journe'd hear-  
ing, and  
assigns good  
■ for  
previous non-  
appearance.

102. If the defendant appears and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Procedure  
where de-  
fendant only  
appears.

103. When a suit is wholly or partially dismissed under section 102, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside ; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

Decree  
against  
plaintiff by  
default bars  
fresh suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

THE application must be made within ninety days—Indian Limitation Act, 2nd schedule, 3rd division art. 163.

See also Rules 38, 39, 40, 41, 42, 44, 45 and 47.

104. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does

Procedure  
where de-  
fendant re-  
siding out  
of British  
India does  
not appear.



not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

Procedure in case of non-attendance of one or more of several plaintiffs.

105. If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

Procedure in case of non-attendance of one or more of several defendants.

106. If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

107. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section \* ■ 436, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

### *Of setting aside Decrees ex-parte.*

Setting aside decree *ex-parte* against defendant.

108. In any case in which a decree is passed *ex-parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside ;

and if he satisfies the Court that the summons was not duly served, or that he was prevented by

any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into court or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

THE application must be made within 30 days from the date of executing any process for enforcing the judgment. Indian Limitation Act, 2nd schedule, 3rd division, art. 164.

See also Rules 38, 39, 40, 41, 42, 44, 45 and 47.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

No decree to be set aside without notice to opposite party.

## CHAPTER VIII.

### OF WRITTEN STATEMENT AND SET-OFF.

\* \* \* \*

111. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit, the defendant may \* \* \* tender a written statement containing the particulars of the debt sought to be set-off.

Particulars of set-off to be given in written statement.

SEE Rule 28 as to time of filing set-off. If an extension of time is sought, the application must be made within the time allowed by the rule for filing the set-off and not afterwards.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the

Inquiry.

amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Effect of  
set-off.

Such set-off shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross claim; but it shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

#### *Illustrations.*

(a.) *A* bequeaths Rs. 2,000 to *B*, and appoints *C* his executor and residuary legatee. *B* dies and *D* takes out administration to *B*'s effects. *C* pays Rs. 1,000 as surety for *D*. Then *D* sues *C* for the legacy. *C* cannot set-off the debt of Rs. 1,000 against the legacy, for neither *C* nor *D* fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b.) *A* dies intestate and in debt to *B*. *C* takes out administration to *A*'s effects, and *B* buys part of the effects from *C*. In a suit for the purchase-money by *C* against *B*, the latter cannot set-off the debt against the price, for *C* fills two different characters, one as the vendor to *B*, in which he sues *B*, and the other as representative to *A*.

(c.) *A* sues *B* on a bill of exchange. *B* alleges that *A* has wrongfully neglected to insure *B*'s goods, and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(d.) *A* sues *B* on a bill of exchange for Rs. 500. *B* holds a judgment against *A* for Rs. 1,000. The two claims being both definite pecuniary demands may be set-off.

(e.) *A* sues *B* for compensation on account of a trespass. *B* holds a promissory note for Rs. 1,000 from *A* and claims to set-off that amount against any sum that *A* may recover in the suit. *B* may do so, for as soon as *A* recovers, both sums are definite pecuniary demands.

(f.) *A* and *B* sue *C* for Rs. 1,000. *C* cannot set-off a debt due to him by *A* alone.

(g.) *A* sues *B* and *C* for Rs. 1,000. *B* cannot set-off a debt due to him alone by *A*.

(h.) *A* owes the partnership-firm of *B* and *C* Rs. 1,000. *B* dies leav-

ing *C* surviving. *A* sues *C* for a debt of Rs. 1,500 due in his separate character. *C* may set-off the debt of Rs. 1,000.

■                      ■                      \*

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

Frame of written statements.

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

115. Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying plaints, and no written statement shall be received unless it be so signed and verified.

Written statements to be signed and verified.

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

Power of Court as to argumentative, prolix or irrelevant written statements.

■                      ■                      \*

When a statement has been rejected under this section, the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

Effect of rejection.



## CHAPTER IX.

## OF THE EXAMINATION OF THE PARTIES BY THE COURT.

Ascertainment whether allegations in plaint and written statements, admitted or denied.

117. \* ■ The Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. \* \*

Oral examination of party, or companion of himself or his pleader.

118. ■ \* Any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party. ■ \* ■ ■

Consequence of refusal or inability of pleader to answer.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass ■ decree against him, or make such order in relation to the suit as it thinks fit.

## CHAPTER X.

OF \* ■ THE ADMISSION, INSPECTION, PRODUCTION,  
IMPOUNDING AND RETURN OF DOCUMENTS.

137. The Court may of its own accord, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Court may send for papers from its own records or from other Courts.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which under the Indian Evidence Act, 1872, would be inadmissible in the suit.

A SUBPÆNA for the production of documents under this section, from another Court, should not be taken out; but an application, the general application form, should be made to the Court. The application should set out how the record or document required is material to the suit, and that the applicant cannot, without unreasonable delay or expense, obtain an authenticated copy. If the application is granted, a letter is written to the Court concerned, asking that the document may be sent to the Small Cause Court.

138. The parties or their pleaders shall bring with them and have in readiness at the ■ hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court ■ ■ has ordered to be produced.

Documentary evidence to be in readiness at \* hearing.

140. The Court shall receive the documents respectively produced by the parties at the ■ hearing.

Documents to be received by Court.

Rejection of irrelevant or inadmissible documents.

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible. \* ■

No documents to be placed on record unless proved. Proved documents to be marked and filed.

141. No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force. Every document so proved or admitted shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which it was produced. \* ■ The document shall then be filed as part of the record :

Entries in shop-books.

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the Court shall mark the entry, and shall then return the book to the person producing it.

All documents produced at the \* hearing and not so proved or admitted shall be returned to the parties respectively producing them. ■ ■ ■ ■

Court may order any document to be impounded.

143. \* ■ The Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit. ■ ■ \* ■

Provisions as to documents applied to material objects.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

## CHAPTER XI.

OF THE *Statement* OF ISSUES.

\*

■

■

\*

150. When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing

Questions of fact or law may by agreement be stated in form of issue.

(a) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(b) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct.

\*

\*

\*

\*

151. If the Court be satisfied, after making such inquiry as it deems proper,

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided, it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

Court, if satisfied that agreement was executed in good faith may pronounce judgment.



and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement;

and upon the judgment so given, decree shall follow and may be executed in the same way ■ if the judgment had been pronounced in a contested suit.

## CHAPTER XII.

### DISPOSAL OF THE SUIT.

If parties not at issue on any question of law or fact.

If one of several defendants be not at issue with plaintiff.

152. If ■ it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

## CHAPTER XIII.

### OF ADJOURNMENTS.

Court may grant time, and adjourn hearing.

Costs of adjournment.

156. The Court may, if sufficient cause be shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

In all such cases the Court shall fix ■ day for the further hearing of the suit, and may make such

order as it thinks fit with respect to the costs occasioned by the adjournment:

■                      \*                      ■                      ■

IF an adjournment is applied for on the ground of sickness, the application should be supported by a medical certificate, where that is possible, and some one must prove the certificate. In the absence of a certificate, the sickness and inability of the party or witness to appear must be proved. In the case of a defendant, it must also be shown that there is a defence to the action which requires his personal attendance.

Sickness, of itself, is not a ground for adjournment, if the suit is not defended or the personal attendance of the defendant is not required.

157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII, or make such other order as it thinks fit.

Procedure if parties fail to appear on day fixed.

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

Court may proceed notwithstanding either party fails to produce evidence, &c.

## CHAPTER XIV.

### OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

159. The parties may, after the summons has been delivered for service on the defendant, obtain, on application to the Court or to such officer it appoints in this behalf, summonses

Summons to attend to give evidence or produce documents.

to persons whose attendance is required either to give evidence or to produce documents.

NO summons against a police officer to give evidence or produce documents will be issued without a Judge's order. Small Cause Court Order, dated 20th July 1882.

Expenses of witnesses to be paid.

160. The party applying for a summons shall, \* \* pay \* such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend, and for one day's attendance.

Scale of expenses.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

SEE Rules 29, 30, 31, 32, and Schedule annexed.

Tender of expenses to witness.

161. The sum ■ \* shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Procedure where insufficient sum paid.

162. If it appear to the Court \* ■ that the sum paid ■ \* is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses if witness detained more than one day.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose

instance he was summoned to pay \* such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such *payment* being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

Time, place and purpose of attendance to be specified in summons.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

Summons to produce document.

165. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

Power to require persons present in Court to give evidence.

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed

Summons how served.



for the service of summons on the defendant; and the rules contained in Chapter VI as to proof of service shall apply in the case of all summonses served under this section.

Time for serving summons.

167. The service shall in all cases be made ■ sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Court may of its own accord summon as witnesses strangers to suit.

171. Subject to the rules of this Code as to attendance and appearance and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons summoned to give evidence or produce document.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in ■ suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

When they may cease to attend.

173. No person so summoned and attending *shall cease to attend while bound so to do*, unless and until (a) he has been examined or has produced the document and the Court has risen, or (b) he has obtained the Court's leave to depart.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending *ceases to attend* in contravention of section 173, the Court may order him to be arrested and brought before the Court :

Consequences of failure to comply with summons.

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

*Explanation.*—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given, may release him.

Procedure when witness apprehended cannot give evidence ■ produce documents.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

Persons bound to attend in person.

(a) within the local limits of its ordinary original jurisdiction, or

(b) without such limits and at a place less than

fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distant from the court-house.

Consequence  
of refusal of  
party to give  
evidence  
when called  
on by Court.

177. If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

Rules as to  
witnesses to  
apply to  
parties  
summoned.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

## CHAPTER XV.

### OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

Statement  
and produc-  
tion of  
evidence by  
party having  
right to  
begin.

179. On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Rules as to  
right to begin.

*Explanation.*—The plaintiff has the right to begin, unless where the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

180. The other party shall then state his case and produce his evidence (if any).

Statement and production of evidence by other party.

The party beginning is then entitled to reply.

Reply by party beginning.

181. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence, and under the personal direction and superintendence, of the Judge.

Witnesses to be examined in open Court.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness. \* \*

Power to examine witness immediately.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

WHEN a witness has been examined *de bene esse*, either party to the suit or his pleader may obtain a copy of the evidence so taken. S. C. Court Order, dated 8th August, 1882.

193. The Court may at any stage of the suit recall any witness who has been examined and who has not *ceased to attend* in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

Court may recall and examine witness.



## CHAPTER XVI.

## OF AFFIDAVITS.

Power to order any point to be proved by affidavit.

194. Any Court of first instance and any appellate Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Power to order attendance of declarant for cross-examination.

195. Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the declarant.

Such attendance shall be in Court unless the declarant is exempted under this Code from personal appearance in Court, or the Court otherwise directs.

Matters to which affidavits shall be confined.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

197. In the case of any affidavit under this Code—

Oath of declarant by whom to be administered.

(a) any Court or Magistrate, or

(b) any officer whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf,

may administer the oath of the declarant.

## CHAPTER XVII.

### OF JUDGMENT AND DECREE.

198. The Court, after the evidence has been duly taken and the parties have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Judgment when pronounced.

**EITHER** party to a suit or his pleader is entitled to take a copy of the written judgment of the Court, if such judgment has been filed with the record-keeper. Small Cause Court Order, dated 8th August, 1882.

199. A Judge may pronounce ■ judgment written by his predecessor but not pronounced.

Power to pronounce judgment written by Judge's predecessor.

206. ■ ■ If any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties, amend the decree : ■ \* provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

Power to amend decree.

\*

\*

\*

\*

Decree for delivery of moveable property.

208. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

In suits for money, decree may order certain interest to be paid on principal sum adjudged.

209. When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

Decree may direct payment by instalments.

210. In all decrees for the payment of money, the Court may for any sufficient reason order that the amount shall be paid by instalments, with or without interest.

SEE ss. 29 and 30 of the Act and Rules 34, 35, 36 and 37.

\*

\*

\*

\*

Decree when set-off is allowed.

216. If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Effect of decree as to sum awarded to defendant.

The decree of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules in respect of

appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

217. Certified copies of the *proceedings* and decree shall be furnished to the parties on application to the Court, and at their expense.

Certified copies of *proceedings* and decree to be furnished.

## CHAPTER XVIII.

### OF COSTS.

218. When disposing of any application under this Code, the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

Costs of applications.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

Judgment to direct by whom costs to be paid.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power :

Power of Court to costs.

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money.

221. The Court may direct that the cost payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

Costs may be set-off against sum admitted or found to be due.



## CHAPTER XIX.

## OF THE EXECUTION OF DECREES.

*This Chapter applies only so far as relates to the attachment of moveable property or decrees therefor.*

*A. — Of the Court by which Decrees may be executed.*

Court by  
which decree  
may be ex-  
ecuted.

223. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court—

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may of its own motion send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognizable by a Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (a), (b) and (c) of section 224, and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

THIS section is extended to the Presidency Small Cause Courts by this Code, s. 8.

\*                      ■                      \*

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the

Court receiving copies of decree, &c., to file same without proof.

jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

THIS section is extended to the Presidency Small Cause Courts by this Code, s. 8.

\*

\*

\*

\*

*B.—Of Application for Execution.*

Application  
for execu-  
tion.

230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

\*

\*

■

\*

SEE Rule 22.

Application  
by joint  
decree-holder.

231. If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

232. If ■ decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it ; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Application  
by transferee  
of decree.

Provided as follows :—

(a) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution :

(b) where ■ decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

233. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Transferee to  
hold subject  
to equities  
enforceable  
against  
original  
holder.

234. If ■ judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

If judg-  
ment-debtor  
die before  
execution,  
application  
may be made  
against his  
representa-  
tive.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of ; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder,



compel the said representative to produce such accounts as it thinks fit.

■            ■            ■            ■

*C.—Of staying Execution.*

■            ■            ■            ■

Stay of execution pending suit between decree-holder and judgment-debtor.

243. If ■ suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

*D.—Questions for Court executing Decree.*

Questions to be decided by Court executing decree.

244. The following question shall be determined by order of the Court executing a decree and not by separate suit (namely).

\*            ■            \*            \*

(c) ■ ■ Questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree.

■            \*            \*            ■

*E.—Of the Mode of executing Decrees.*

\*            \*            ■            ■

Cross-decrees.

246. If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds ■ decree for the larger sum, and for so much only ■ remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

*Explanation I.*—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

*Explanation II.*—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

*Explanation III.*—This section does not apply, unless

the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

the sums due under the decrees are definite.

*Illustrations.*

(a.) *A* holds a decree against *B* for Rs. 1,000. *B* holds a decree against *A* for the payment of Rs. 1,000 in case *A* fails to deliver certain goods at a future day. *B* cannot treat his decree as a cross-decree under this section.

(b.) *A* and *B*, co-plaintiffs, obtained a decree for Rs. 1,000 against *C*, and *C* obtains a decree for Rs. 1,000 against *B*. *C* cannot treat his decree as a cross-decree under this section.

(c.) *A* obtains a decree against *B* for Rs. 1,000. *C*, who is a trustee for *B*, obtains a decree on behalf of *B* against *A* for Rs. 1,000. *B* cannot treat *C*'s decree as a cross-decree under this section.

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

Cross-claims  
under             
decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

Notice to  
show ■  
why decree  
should not  
be executed.

248. The Court shall issue ■ notice to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him,

■                      ■                      ■                      ■

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made:

Proviso.

Provided that no such notice shall be necessary

■                      \*                      ■                      ■

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

*Explanation.*—In this section the phrase “the Court” means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

Procedure  
after issue  
of notice.

249. If the person to whom notice is issued under the last preceding section does not appear, or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order ■ it thinks fit.

Warrant  
when to  
issue.

250. When the preliminary measures (if any) required by the foregoing provisions have been

taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree.

SEE Rules 19, 26 and 27.

251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

Date, signature, seal and delivery.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

SEE Rules 19, 26 and 27.

252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property :

Decree against representative of deceased for money to be paid out of deceased's property.

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

\* \* \* \*

254. Every decree or order directing a party to pay money, as compensation or costs, or as the

Decree for money.



alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

Power to direct immediate execution of decree for money not exceeding Rs. 1,000.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

Modes of paying money under decree.

257. All money payable under a decree shall be paid as follows (namely)—

(a) into the Court whose duty it is to execute the decree; or

(b) out of Court to the decree-holder; or

(c) otherwise as the Court which made the decree directs.

Agreement to give time to judgment-debtor.

257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Agreement for satisfaction of judgment-debt.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor.

258. If any money payable under a decree is paid out of Court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

Payment  
to decree-  
holder.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid.

259. If the decree be for any specific moveable, ■ ■ it may be enforced by the seizure, if practicable, of the moveable \* \* and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property or by both imprisonment and attachment if necessary.

Decrees for  
specific  
moveables.  
\* \* ■

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

\* \* \* \*

#### *F.—Of Attachment of Property.*

Property liable to attachment and sale in execution of decree.

266. The following property is liable to attachment and sale in execution of a decree (namely)—lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundís, promissory-notes, Government-securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which

he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

(a) the necessary wearing apparel of the judgment-debtor, his wife and children ;

(b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may in the opinion of the Court be necessary to enable him to earn his livelihood as such ;

(c) the materials of houses and other buildings belonging to and occupied by agriculturists ;

(d) books of account ;

(e) mere rights to sue for damages ;

(f) any right of personal service ;

(g) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions ;

(h) the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount ;

(i) the pay and allowances of persons to whom the Native Articles of War apply ;

(j) the wages of labourers and domestic servants ;

(k) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;

(l) a right to future maintenance.



*Explanation.*—The particulars mentioned in clauses (g), (h), (i) and (j) are exempt from attachment or sale, whether before or after they are actually payable :

Provided also that nothing in this section shall be deemed

(a) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or

(b) to affect the Army Act, 1881, or any similar law for the time being in force.

THIS section only applies so far as relates to the attachment of *moveable* property or decrees therefor. As to what may be attached when the judgment-debtor is a tenant of immovable property see s. 28 of the Presidency Small Cause Courts Act. As to attachment of *immovable* property see s. 31 of the same Act.

For scale of feeding charges for livestock taken in execution of decrees see Appendix M.

For rules relating to peon's wages see Appendix A, 18—29.

Power to  
summon and  
examine per-  
sons ■ to  
property  
liable to be  
seized.

267. The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

Attachment  
of debt, share  
and other  
property not  
in possession  
of judgment-  
debtor.

268. In the case of (a) a debt not secured by a negotiable instrument, (b) ■ share in the capital of any public Company or Corporation, (c) other moveable property not in the possession of the judg-

ment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by ■ written order prohibiting,

(a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(b) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon ;

(c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

Every such officer may from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

Attachment  
of moveable  
property in  
possession of  
judgment-  
debtor.

269. If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof :

Proviso.

Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

Power to  
make rules  
for mainten-  
ance of at-  
tached live-  
stock.

The Local Government may, from time to time, make rules for the maintenance and custody, while under attachment, of livestock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

Attachment  
of negotiable  
instruments.

270. If the property be a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to the further orders of the Court.

Seizure of  
property in  
building.

271. No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house, after

sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be :

Provided that, if the room be in the actual occupancy of ■ woman, who according to the customs of the country does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw ; and after allowing ■ reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Seizure of property in zanánás.

272. If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues :

Attachment of property deposited in Court or with Government officer.

Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Proviso.

273. If the property be a decree for money passed by the Court which passed the decree sought to

Attachment of decree for money.



be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

\*

\*

\*

■

Order for withdrawal of attachment after satisfaction of decree.

■

275. If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

Private alienation of property after attachment to be void.

276. When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

Court may direct coin or currency-notes attached to be paid to party entitled.

277. If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Investigation of claims to and objections to attachment of attached property.

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of ■ decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or

objection with the like power ■ regards the examination of the claimant or objector, and in all other respects, ■ if he was ■ party to the suit :

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Postpone-  
ment of sale.

SEE Rules 49, 50 and 51.

279. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to  
be adduced by  
claimant.

280. If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

Release of  
property  
from attach-  
ment.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the pos-

Disallowance  
of claim to  
release of pro-  
perty attach-  
ed.

session of some other person in trust for him, or in the occupancy of ■ tenant or other person paying rent to him, the Court shall disallow the claim.

Continuance of attachment subject to claim of incumbrancer.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

■ ■ ■ ■ ■

Power to order property attached to be sold and proceeds to be paid to per-  
■ entitled.

284. Any Court may order that any property which has been attached, or such portion thereof ■ may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Property attached in execution of decree of several Courts.

285. Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

### *G.—Of Sale and Delivery of Property.*

#### *(a) General Rules.*

Sales by whom conducted and how made.

286. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction of which due notice shall be given.

\* \* \* ■

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of *at least ten days calculated from the date on which the attachment was made.* Time of sale.

291. \* ■ \* \* Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court. \* ■ Stoppage of sale on tender of debt and costs, or on proof of payment.

292. No officer having any duty to perform in connection with any sale under this chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire, any interest in any property sold at such sale. Officers concerned in execution-sales not to bid for or buy property sold.

293. The deficiency of price (if any) which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale, Defaulting purchaser answerable for loss by re-sale.

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

294. No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property. Decree-holder not to bid for or buy property without permission.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the If decree-holder purchase, amount of decree may



be taken ■  
payment.

decree shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the resale, and all expenses attending it, shall be paid by the decree-holder.

Proceeds of  
execution-  
sale to be  
divided  
rateably  
among de-  
cree-holders.

295. Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Provided as follows:—

Proviso  
where pro-  
perty is sold  
subject to  
mortgage.

(a) when any property is sold subject to ■ mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

(b) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold:

(c) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied— Proviso.

*first*, in defraying the expenses of the sale;

*secondly*, in discharging the interest and principal-money due on the incumbrance;

*thirdly*, in discharging the interest and principal-moneys due on subsequent incumbrances (if any); and

*fourthly*, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

#### (b) *Rules as to Moveable Property.*

296. If the property to be sold be a negotiable instrument or ■ share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through ■ broker at the market-rate of the day. Rules ■ to negotiable instruments and shares in public Companies.

297. In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale Payment for other moveable property sold.

directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

Irregularity not to vitiate sale of moveable property, but any person injured may sue.

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of moveable property actually seized.

299. When the property sold is a negotiable instrument or other moveable property of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery of moveable property to which judgment-debtor entitled subject to lien.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

Delivery of debts and of shares in public Companies.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to

any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

Transfer of negotiable instruments and shares.

The endorsement or execution shall be in the following form or to the like effect:—"A. B., by C. D., Judge of the Court of (*or as the case may be*); in a suit by E. F. against A. B."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Vesting order in case of other property.

\* \* \* \*

#### *H.—Of Resistance to Execution.*

328. If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed

Procedure in case of obstruction to execution of decree.



by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

SEE Rule 52.

Procedure in  
■ of ob-  
struction by  
judgment-  
debtor or at  
his instiga-  
tion.

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

Procedure  
when ob-  
struction  
continues.

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for ■ term which may extend to thirty days, and direct that the decree-holder be put into possession of the property.

\*

■

■

■

### *I.—Of Arrest and Imprisonment.*

Place of judg-  
ment-debtor's  
imprison-  
ment.

336. A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the Court, and his imprisonment may be in the civil jail of

the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned:

Provided as follows:—

(a) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open. But, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found: provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest:

(b) when the decree in execution of which a judgment-debtor is arrested is a decree for money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him. Proviso.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court

under this section, the Court shall inform him that he may apply under Chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he places all his property in possession of a receiver appointed by the Court.

SEE s. 95 of the Presidency Small Cause Courts Act and Rules 19, 26 and 27.

Chapter XX, relating to insolvents, is not extended to the Presidency Small Cause Courts.



Warrant for arrest to direct judgment-debtor to be brought up.

337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

Scales of subsistence-allowances.

338. The Local Government may from time to time prescribe scales, graduated according to rank, race and nationality, of *daily* allowances payable for the subsistence of judgment-debtors.

FOR prescribed scales see Appendix J.

Judgment-debtor's subsistence-money.

339. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, *shall be* sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for

his subsistence such *daily* allowance ■ he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The *daily* allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by \* payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

SEE Appendix J.

340. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit: Subsistence-money to be costs in suit.

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

341. The judgment-debtor shall be discharged from jail, Release of judgment-debtor.

(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

(b) on the decree being otherwise fully satisfied; or

(c) at the request of the person on whose application he has been imprisoned; or

(d) on such person omitting to pay the allowance ■ hereinbefore directed; or



(*f*) when the term of his imprisonment, as limited by section 342, is fulfilled:

Provided that, in the second ■ *and* third cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

Imprisonment not to exceed six months.

342. No person shall be imprisoned in execution of a decree for a longer period than six months;

When not to exceed six weeks.

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

FOR periods of imprisonment ■ Appendix K.

Endorsement on warrant.

343. The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

\*

\*

\*

■

## PART II.

## OF INCIDENTAL PROCEEDINGS.

## CHAPTER XXI.

## OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

361. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

No abatement by party's death, if right to sue survives.

*Illustrations.*

(a.) *A* covenants with *B* and *C* to pay an annuity to *B* during *C*'s life. *B* and *C* sue *A* to compel payment. *B* dies before the decree: the right to sue survives to *C*, and the suit does not abate.

(b.) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of *B* and *C*, and he may continue the suit against *A*'s representative.

(c.) *A* sues *B* for libel. *A* dies. The right to sue does not survive, and the suit abates.

(d.) *A*, a member of a Hindû joint family under the Mitâksharâ law, institutes a suit for partition of the family property. *A* dies leaving *B*, a minor son, his heir. The right to sue survives to *B*, and the suit does not abate.

362. If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs or against the surviving defendant or defendants.

Procedure in case of death of one of several plaintiffs or defendants, if right to sue survives.

363. If there be more plaintiffs than one, and any of them dies, and if the right to sue does not

Procedure in case of death of one of se-

veral plaintiffs where right to sue survives to survivors and representative of deceased.

survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

Procedure where no application made by representative of deceased plaintiff.

364. If within the time limited by law no application be made to the Court by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs ;

and the legal representative (if any) of the deceased plaintiff shall be made a party and shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

Procedure in case of death of sole, or sole surviving plaintiff.

365. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, where the right to sue survives, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.

Abatement where no application by representative of deceased plaintiff.

366. If within the time limited by law no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to ■ final determination of the matter in dispute, or for both those purposes.

*Explanation.*—A certificate of heirship, or ■ certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

367. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

Procedure in case of dispute ■ to representative of deceased plaintiff.

368. If there be more defendants than one, and any of them die before decree and the right to sue does not survive against the surviving defendant or defendants alone,

Procedure in case of death of one of several defendants,

and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives,

or of sole, or sole surviving, defendant.

the plaintiff may make an application to the Court, specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.



The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit ;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit :

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

Suit not  
abated by  
marriage of  
female party.

369. The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also ; and, in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

370. The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

When plaintiff's bankruptcy or insolvency bars suit.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

Procedure when assignee fails to continue suit or give security.

372. In other cases of assignment, creation or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come either in addition to, or in substitution for, the person from whom it has passed, as the case may require.

Procedure in case of assignment pending suit.

SEE Rules 38, 39, 40, 41 and 42.

## CHAPTER XXII.

### OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

373. If, at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient

Power to allow plaintiff to withdraw with liberty to bring fresh suit.

grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation  
law not  
affected by  
first suit.

374. In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought.

Compromise  
of suits.

375. If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded.

■                    \*                    \*                    ■

## CHAPTER XXIII.

### OF PAYMENT INTO COURT.

Deposit by  
defendant of  
amount in  
satisfaction  
of claim.

376. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

377. Notice in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Notice of deposit.

378. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Interest on deposit not allowed to plaintiff after notice.

379. If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where plaintiff accepts deposit as satisfaction in part.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Procedure where he accepts it as satisfaction in full.

#### *Illustrations.*

(a.) *A* owes *B* Rs. 100. *B* sues *A* for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, *A* pays the money into Court. *B* accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b.) *B* sues *A* under the circumstances mentioned in illustration (a.) On the plaint being filed, *A* disputes the claim. Afterwards *A* pays the money into Court. *B* accepts it in full satisfaction of his claim. The Court should also give *B* his costs of suit, *A*'s conduct having shown that the litigation was necessary.



(c.) *A* owes *B* Rs. 100 and is willing to pay him that sum without suit. *B* claims Rs. 150 and — *A* for that amount. On the plaint being filed, *A* pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. *B* accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay *A*'s costs.

## CHAPTER XXIV.

### OF REQUIRING SECURITY FOR COSTS.

When security for costs may be required from plaintiff at any stage of suit.

380. If, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

Effect of failure to furnish security.

381. In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373.

Residence out of British India.

382. Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

## CHAPTER XXV.

## OF COMMISSIONS.

*A.—Commissions to examine Witnesses.*

383. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are from sickness or infirmity unable to attend it.

Cases in which Court may issue commission to examine witness.

384. Such order may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

Order for commission.

385. The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same.

When witness resides within Court's jurisdiction.

386. Any Court may in any suit issue a commission for the examination of—

Persons for whose examination commission may issue.

(a) any person resident beyond the local limits of its jurisdiction;

(b) persons who are about to leave such limits before the date on which they are required to be examined in Court; and

(c) civil and military officers of Government who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being ■ High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader

of ■ High Court whom the Court issuing the commission thinks fit to appoint.

The Court on issuing any commission under this section shall direct whether the commission shall be returned to itself or to any subordinate Court.

THIS section is extended to the Presidency Small Cause Courts by this Code, s. 8, and the whole chapter is extended by the second schedule to the Small Cause Courts Act.

Commission to examine witness not within British India.

387. When any Court to which application is made for the issue of a commission for the examination of ■ person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission.

Court to examine witness pursuant to commission.

388. Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

Return of commission with depositions of witnesses.

389. After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

When depositions may be read in evidence.

390. Evidence taken under ■ commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be person-

ally examined, or exempted from personal appearance in Court, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

391. The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by

Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts.

(a) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country for the time being in alliance with Her Majesty.

### *B.—Commissions for local Investigations.*

392. In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual nett profits, and the same cannot be conveniently conducted by the Judge in person, the Court may issue ■ commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court:

Commission to make local investigations.

Provided that, when the Local Government has made rules as to the persons to whom such com-



mission shall be issued, the Court shall be bound by such rules.

Procedure of commissioner.

393. The commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, signed with his name, to the Court.

Report and depositions to be evidence in suit.

The report of the commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

Commissioner may be examined in person.

### *C.—Commissions to examine Accounts.*

Commission to examine or adjust accounts.

394. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Court to give commissioner necessary instructions.

395. The Court shall furnish the commissioner with such part of the proceedings and such detailed instructions as appear necessary,

and the instructions shall distinctly specify whether the commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Court to receive commissioner's pro-

The proceedings of the commissioner shall be received in evidence in the suit, unless the Court

has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

ceedings or  
direct further  
inquiry.

*E.—General Provisions.*

397. Before issuing any commission under this chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed by the Court, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Expenses of  
commission  
to be paid into  
Court.

398. Any commissioner appointed under this chapter may, unless otherwise directed by the order of appointment,

Powers of  
commission-  
ers.

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the commissioner thinks proper to call upon to give evidence in the matter referred to him ;

(b) call for and examine documents and other things relevant to the subject of inquiry ;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

399. The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

Attendance,  
examination  
and punish-  
ment of wit-  
nesses before  
commission-  
er.

For the purposes of this section, the commissioner shall be deemed to be a Court of Civil Judicature.

Court to direct parties to appear before commissioner.

400. Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the commissioner in person or by their agents or pleaders.

Procedure *ex-parte*.

If the parties do not so appear the commissioner may proceed *ex-parte*.

WHEN witnesses have been examined on commission, either party to the suit or his pleader may obtain copies of the evidence taken on commission.—S. C. Court Order, dated 8th August 1882.

## PART III.

### OF SUITS IN PARTICULAR CASES.

## CHAPTER XXVII.

### SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

Suits by or against Secretary of State in Council.

416. Suits by or against the Government shall be instituted by or against (as the case may be) the Secretary of State for India in Council.

Persons authorized to act for Government.

417. Persons being *ex officio* or otherwise authorized to act for Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of Government.

Plaints in suits by Secretary of State in Council.

418. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the

plaintiff, it shall be sufficient to insert the words  
“The Secretary of State for India in Council.”

419. The Government Pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such Court.

Agent for Government to receive process.

420. The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

Appearance and answer by Secretary of State in Council.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Attendance of person able to answer questions relating to suit against Government.

422. Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

Service on public officers.

SEE Rule 21.

423. If the public officer on receiving the summons considers it proper to make ■ reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the

Extension of time to enable officer to make reference to Government.



time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel ;

and the Court upon such application may extend the time for so long as appears to be requisite.

Notice previ-  
ous to suing  
Secretary of  
State in Coun-  
cil or public  
officer.

424. No suit shall be instituted against the said Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff ; and the plaint must contain a statement that such notice has been so delivered or left.

Arrests in  
such suits.

425. No warrant of arrest shall be issued in such suit. \* \*

Application  
where Go-  
vernment  
undertakes  
defence.

426. If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause ■ note of his authority to be entered in the *record*.

Procedure  
where no  
such applica-  
tion made.  
Defendant  
not liable to  
arrest before  
judgment.

427. If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in ■ suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

428. In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.

Exemption of public officers from personal appearance.

429. When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Procedure where decree against Government or public officer.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

## CHAPTER XXVIII.

### SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

430. Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends, may sue in the Courts of British India as if they were subjects of Her Majesty.

When aliens may sue.

No alien enemy residing in British India without such permission or residing in a foreign country, shall sue in any of such Courts.

*Explanation.*—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one

of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

When foreign State may sue.

431. A foreign State may sue in the Courts of British India, provided that—

(a) it has been recognized by Her Majesty or the Governor General in Council, and

(b) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor General in Council.

Persons specially appointed by Government to prosecute or defend for Princes or Chiefs.

432. Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or chief.

■ ■ ■ ■ ■

Execution in British India of decrees of Courts of Native States.

434. The Governor General in Council may from time to time, by notification in the *Gazette of India*,

(a) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established by the authority of the

Governor General in Council, may be executed in British India as if they had been made by the Courts of British India, and

(b) cancel any such declaration.

So long as such declaration remains in force, the said decrees may be executed accordingly.

## CHAPTER XXIX.

### SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

435. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

Subscription  
and verifica-  
tion of plaint.

436. When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

Service on  
Corporation  
or Company.

(a) by leaving it at the registered office (if any) of the Corporation or Company, or

(b) by sending it by post in a letter addressed to such officer or trustee at the office (or if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(c) by giving it to any director, secretary or other principal officer of the Corporation or Company ;

and the Court may require the personal appearance of any director, secretary or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.



## CHAPTER XXX.

## SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

Representa-  
tion of bene-  
ficiaries in  
suits concern-  
ing property  
vested in  
trustees, &c.

437. In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.

Joinder of  
executors and  
administra-  
tors.

438. When there are several executors or administrators, they shall all be made parties to a suit against one or more of them :

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

Husband of  
married exe-  
cutrix not to  
join.

439. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

SEE Rules 35, 36 and 37.

## CHAPTER XXXI.

## SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

Minor must  
sue by next  
friend.

440. Every suit by a minor shall be instituted in his name by an adult person, who in such suit shall be called the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff.

Costs.

441. Every application to the Court on behalf of ■ minor (other than an application under section 449) shall be made by his next friend, or his guardian for the suit.

Applications to be made by next friend or guardian *ad litem*.

442. If a plaint be filed by or on behalf of a minor without ■ next friend, the defendant may apply to have the plaint *rejected* with costs to be paid by the pleader or other person by whom it was *filed*. Notice of such application shall be given to such person by the defendant; and the Court, after hearing his objections, if any, may make such order in the matter as it thinks fit.

Plaint filed without next friend to be *rejected*.

Costs.

443. Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

Guardian *ad litem* to be appointed by Court.

A guardian for the suit is not ■ guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3.

444. Every order made in a suit or on any application before the Court, in or by which ■ minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, ■ the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Order obtained without next friend or guardian may be discharged.

Costs.

445. Any person being of sound mind and full age may act as next friend of a minor, provided his

Who may be next friend.

interest is not adverse to that of such minor, and he is not a defendant in the suit.

Removal of  
next friend.

446. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor, as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

Retirement  
of next  
friend.

447. Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place and giving security for the costs already incurred.

Application  
for appoint-  
ment of new  
next friend.

The application for the appointment of a new next friend shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

Stay of pro-  
ceedings on  
death or re-  
moval of next  
friend.

448. On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

Application  
for appoint-  
ment of new  
next friend.

449. If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Course to be  
followed by  
minor plain-

450. A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending,

on coming of age must elect whether he will proceed with the suit or application.

tiff ■ appli-  
cant on com-  
ing of age.

451. If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

Where he  
elects to  
proceed.

The title of the suit or application shall in such case be corrected so as to read thenceforth thus :

“ A. B., late a minor, by C. D., his next friend, but now of full age. ”

452. If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

Where he  
elects to  
abandon.

Costs.

453. Any application under section 451 or section 452 may be made *ex-parte*; and it must be proved by affidavit that the late minor has attained his full age.

Making and  
proving ap-  
plications  
under sec-  
tions 451, 452.

454. A minor co-plaintiff on coming of age and desiring to repudiate the suit must apply to have his name struck out as co-plaintiff ; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms ■■ to costs or otherwise as it thinks fit.

When minor  
co-plaintiff,  
coming of  
age, desires  
to repudiate  
suit.

Notice of the application shall be served on the next friend, as well as on the defendant; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

Costs.



If the late minor be a necessary party to the suit, the Court may direct him to be made ■ defendant.

When suit  
unreasonable  
or improper.

455. If any minor on attaining majority can prove to the satisfaction of the Court that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

Costs.

Notice of the application shall be served on all the parties concerned, and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit.

Petition for  
appointment  
of guardian  
*ad litem*.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian; Provided that he has no interest adverse to that of the minor.

Who may be  
guardian *ad*  
*litem*.

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor; but neither a plaintiff, nor a married woman, can be so appointed.

Guardian  
neglecting  
his duty may  
be removed.

458. If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove

him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty. Costs.

459. If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place. Appointment in place of guardian dying *pendente lite*.

460. When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application. Guardian *ad litem* of minor representative of deceased judgment-debtor.

461. No sum of money or other thing shall be received or taken by a next friend or guardian for the suit on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor. Before decree, next friend or guardian *ad litem* not to receive money without leave of Court and giving security.

462. No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian. Next friend or guardian *ad litem* not to compromise without leave of Court.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor. Compromise without leave voidable.

463. The provisions contained in sections 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV of 1858, or under any other law for the time being in force. Application of sections 440 to 462 to persons of unsound mind.

Wards of  
Court.

464. Nothing in sections 442 to 462 applies to any minor or person of unsound mind, for whose person or property a guardian or manager has been appointed by the Court of Wards or by the Civil Court under any local law.

SEE Rules 38, 39, 40, 41 and 42.

## CHAPTER XXXII.

### SUITS BY AND AGAINST MILITARY MEN.

Officers or  
soldiers who  
cannot ob-  
tain leave  
may author-  
ize any per-  
son to sue or  
defend for  
them.

465. When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

*Explanation.*—In this chapter the expression ‘commanding officer’ means the officer in actual

command for the time being of any regiment, corps, detachment or dépôt to which the officer or soldier belongs.

466. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Person ■ authorized may act personally or appoint pleader.

467. Processes served upon any person authorized by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

Service on person so ■ thORIZED, or on his pleader, to be good service.

468. When an officer or a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

Service on officers and soldiers.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If from any cause the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

469. If, in the execution of ■ decree, ■ warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, military station or military bazar, the officer charged with the

Execution of warrant of arrest in cantonments, &c.



execution of such warrant or other process shall deliver the same to the commanding officer.

The commanding officer shall back the warrant or other process with his signature, and, in the case of ■ warrant of arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.

## CHAPTER XXXIII.

### INTERPLEADER.

When interpleader-suit may be instituted.

470. When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself:

Provided that if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute ■ suit of interpleader.

Plaint in such suit.

471. In every suit of interpleader the plaintiff must, in addition to the other statements necessary for complaints, state—

(a) that the plaintiff has no interest in the thing claimed otherwise than as ■ mere stakeholder;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

472. When the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit.

Payment of  
thing claimed  
into Court.

473. At the first hearing the Court may—

Procedure at  
first hearing.

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit;

or, if it thinks that justice or convenience so require,

(b) retain all parties until the final disposal of the suit;

and, if it finds that the admissions of the parties or other evidence enable it,

(c) adjudicate the title to the thing claimed: or else it may

(d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims.

474. Nothing in this chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

When agents  
and tenants  
may institute  
interpleader-  
suits.

#### *Illustrations.*

(a.) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b.) *A* deposits ■ box of jewels with *B* as his agent. He then writes to *C* for the purpose of making the jewels ■ security for a debt due from himself to *C*. *A* afterwards alleges that *C*'s debt is satisfied, and *C* alleges the contrary. Both claim the jewels from *B*. *B* may institute ■ interpleader-suit against *A* and *C*.

Charge of  
plaintiff's  
costs.

475. When the suit is properly instituted, the Court may provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

Procedure  
where de-  
fendant is  
suing stake-  
holder.

476. If any of the defendants in an interpleader-suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed by the Court which passed the decree in the interpleader-suit in favour of the stakeholder, that such decree has been passed, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Costs.

---

## PART IV.

### PROVISIONAL REMEDIES.

## CHAPTER XXXIV.

### OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

Immoveable property cannot be attached under this chapter by the Small Cause Court, or except as provided in s. 28 of the Presidency Small Cause Court Act.

#### *A.—Arrest before Judgment.*

477. If at any stage of any suit, other than a suit for the possession of immoveable property, the plaintiff satisfies the Court by affidavit or otherwise—

When plaintiff may apply that security be taken.

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to



answer any decree that may be passed against him in the suit.

SEE Rules 38, 39, 40, 41 and 42.

Order to bring up defendant to show cause why he should not give security.

478. If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

that the defendant, with any such intent as aforesaid,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance.

If defendant fail to show cause, Court may order him to make deposit or give security.

479. If the defendant fail to show such cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself in default of such appearance to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure in case of application by surety to be discharged.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue ■ warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

481. If the defendant fail to comply with any order under section 479 or section 480, the Court may commit him to jail until the decision of the suit, or if judgment be given against the defendant, until the execution of the decree: Provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees :

Procedure where defendant fails to give security or find fresh security.

Provided that no person shall be detained in prison under this section after he has complied with such order.

482. The provisions of section 339 as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this chapter.

Subsistence of defendants arrested.

*B.—Attachment before Judgment.*

483. If at any stage of any suit the plaintiff satisfies the Court by affidavit or otherwise that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him,

Application before judgment for security from defendant to satisfy decree, and in default for attachment of property.

(a) is about to dispose of the whole or any part of his property, or to remove the same from the

jurisdiction of the Court in which the suit is pending, or

(b) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit, and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

Contents of application.

The application shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

SEE Rules 38, 39, 40, 41 and 42.

Court may call on defendant to furnish security or show cause.

484. If the Court, after examining the applicant and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the sum, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also in the order direct the con-

ditional attachment of the whole or any portion of the property specified in the application.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required, within the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

Attachment if cause not shown or security not furnished.

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

Withdrawal of attachment.

486. The attachment shall be made in the manner herein provided for the attachment of property in execution of a decree for money.

Mode of making attachment.

487. If any claim be preferred to the property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

Investigation of claims to property attached before judgment.

SEE Rules 49, 50 and 51.

488. When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Removal of attachment, when security furnished or suit diminished.

489. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person

Attachment not to affect rights of strangers, ■



bar decree-  
holder from  
applying for  
sale.

holding ■ decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Property at-  
tached under  
chapter not  
to be re-at-  
tached in exe-  
cution of  
decree.

490. Where property is under attachment by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

*C.—Compensation for improper Arrests or Attachments.*

Compensa-  
tion for ob-  
taining ar-  
rest or attach-  
ment on in-  
sufficient  
grounds.

491. If in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems ■ reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment :

Proviso.

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

## CHAPTER XXXV.

## OF ■ ■ INTERLOCUTORY ORDERS.

*B.—Interlocutory Orders.*

498. The Court may, on the application of any party to ■ suit, order the sale, by any person named in such order, and in such manner and on such terms ■ it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay.

Power to order interim sale of perishable articles.

499. The Court may, on the application of any party to a suit, and on such terms as it thinks fit,

Power to make order for detention, &c., of subject-matter, and to authorize entry, taking of samples and experiments.

(a) make an order for the detention, preservation or inspection of any property being the subject of such suit;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit, and

(c) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

500. An application by the plaintiff for an order under section 498 or section 499 may be made after notice in writing to the defendant at any time after service of the summons.

Application for such orders to be after notice.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

\*        ■        \*        \*

Deposit of  
money, &c.,  
in Court.

502. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

\*        ■        ■        ■

## PART V.

### OF SPECIAL PROCEEDINGS.

## CHAPTER XXXVII.

### REFERENCE TO ARBITRATION.

Parties to  
suit may ap-  
ply for order  
of reference.

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders, ■ ■ to the Court for an order of reference.

■        \*        \*        \*

Nomination  
of arbitrator.

507. The arbitrator shall be nominated by the parties in such manner ■ may be agreed upon between them.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

When Court  
to nominate  
arbitrator.

508. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

Order of  
reference.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,

When refer-  
ence is to  
two or more,  
order to pro-  
vide for  
difference of  
opinion.

(a) by the appointment of an umpire, or

(b) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or

(c) by empowering the arbitrators to appoint an umpire, or

(d) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

510. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects or becomes incapable to act, or leaves British India under circumstances showing that he will probably not

Death,  
incapacity,  
&c., of arbi-  
trators or  
umpire.



return at an early date, the Court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit.

Appointment  
of umpire by  
Court.

511. Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Powers of  
arbitrator or  
umpire ap-  
pointed  
under sec-  
tions 509,  
510, 511.

512. Every arbitrator or umpire appointed under section 509, section 510 or section 511 shall have the like powers as if his name had been inserted in the order of reference.

Summoning  
witnesses.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Punishment  
for default,  
&c.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

514. If from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit.

Extension of time for making award.

Supersession of arbitration.

515. When an umpire has been appointed he may enter on the reference in the place of the arbitrators,

When umpire may arbitrate in lieu of arbitrators.

(a) if they have allowed the appointed time to expire without making an award, or

(b) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

516. When an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court.

Award to be signed and filed.

■                      ■                      \*                      \*

517. Upon any reference by an order of the Court, the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the form of ■ special case for the opinion of the Court ; and the Court shall deliver its opinion thereon ; and such opinion shall be added to and form part of the award.

Arbitrators or umpire may state special

518. The Court may, by order, modify or correct an award,

Court may, on application, modify or correct award in certain cases.

(a) where it appears that ■ part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

Order as to  
costs of  
arbitration.

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

When award  
or matter  
referred to  
arbitration  
may be  
remitted.

520. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration ;

(b) where the award is so indefinite as to be incapable of execution ;

(c) where an objection to the legality of the award is apparent upon the face of it.

Grounds for  
setting aside  
award.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds (namely)—

(a) corruption or misconduct of the arbitrator or umpire ;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire ;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit ;

and no award shall be valid unless made within the period allowed by the Court.

522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

Judgment to be according to award.

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees.

Decree to follow.



523. When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in Court.

Agreement to refer to arbitration may be filed in Court.

The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

Application to be numbered and registered.



Notice to  
show cause  
against  
filing.

On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein and the parties cannot agree as to the nomination.

Provisions  
of chapter  
applicable to  
proceedings  
under order  
of reference.

524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

Filing  
award in  
matter refer-  
red to arbi-  
tration with-  
out interven-  
tion of  
Court.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in Court.

Application  
to be num-  
bered and  
registered.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

Notice to  
parties to  
arbitration.

The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

526. If no ground such ■ is mentioned or referred to in section 520 or section 521 be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

Filing an enforcement of such award.

FOR form of notice to show cause why award should not be filed see Appendix L.

## CHAPTER XXXVIII.

### OF PROCEEDINGS ON AGREEMENT OF PARTIES.

527. Parties claiming to be interested in the decision of any question of fact or law, may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,

Power to state case for Court's opinion.

(a) ■ sum of money fixed by the parties or to be determined by the Court, shall be paid by one of the parties to the other of them; or

(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

SO much of clause (b) as relates to immoveable property is not applicable to the Small Cause Court.

When value of subject-matter must be stated.

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Agreement to be filed and numbered as suit.

529. The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

Hearing and disposal of case.

531. The case shall be set down for hearing as a suit instituted under Chapter V, the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them, and

(b) that they have a *boná fide* interest in the question stated therein, and

(c) that the same is fit to be decided, it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow and shall be enforced in the manner provided in this Code for the execution of decrees.

## CHAPTER XXXIX.

### OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

532. In any Court to which this section applies all suits upon bills of exchange, hundís or promissory notes may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this Code ; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may from time to time prescribe.

*Institution  
of summary  
suits upon  
bills of  
exchange, &c.*

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter mentioned so to appear and defend ;

and in default of his obtaining such leave of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case



the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

Payment into Court of [redacted] mentioned in summons.

The defendant shall not be required to pay into Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *primâ facie* sustainable, or feels reasonable doubt as to its good faith.

*Explanation.*—This section is not confined to cases in which the bill, hundí or note sued upon together with mere lapse of time, is sufficient to establish a *primâ facie* right to recover.

Defendant showing defence on merits to have leave to appear.

533. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

Power to set aside decree.

534. After decree, the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to order bill, &c., to be deposited with officer of Court.

535. In any proceeding under this chapter the Court may order the bill, hundí or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

Recovery of cost of noting non-acceptance of dishonoured bill or note.

537. Except as provided by sections 532 to 536 (both inclusive), the procedure in suits under this chapter shall be the same as the procedure in suits instituted under Chapter V.

Procedure in suits under chapter.

538. Sections 532 to 537 (both inclusive) apply only to—

Application of chapter.

(a) the High Courts of Judicature at Fort William, Madras and Bombay;

(b) the Court of the Recorder of Rangoon;

(c) the Courts of Small Causes in Calcutta, Madras and Bombay;

(d) the Court of the Judge of Karachi; and

(e) any other Court having ordinary original civil jurisdiction to which the Local Government may, by notification in the official Gazette, apply them.

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may from time to time alter or cancel any such notification.

THIS chapter is extended to the Presidency Small Cause Courts by this Code, s. 8.



## PART VII.

### CHAPTER XLVI.

#### OF REFERENCE TO AND REVISION BY THE HIGH COURT.

Reference of  
question to  
High Court.

617. If before or on the hearing of a suit or an appeal in which the decree is final, or if in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

SEE s. 69 of the Act.

Court may  
pass decree  
contingent  
upon opinion  
of High  
Court.

618. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred |

but no execution shall be issued, property sold, or person imprisoned in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

619. The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made ; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Judgment of High Court to be transmitted, and case disposed of accordingly.

620. Costs, if any, consequent on a reference for the opinion of the High Court, shall be costs in the case.

Costs of reference to High Court.

621. When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit.

Power to alter, &c., decrees of Court making reference.

622. The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order in the case as the High Court thinks fit.

Power to call for record of cases not appealable to High Court.



## PART X.

## CHAPTER XLIX.

## MISCELLANEOUS.

Exemption of certain women from personal appearance.

640. Women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process.

Local Government may exempt certain persons from personal appearance.

641. The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

Lists of names of persons exempted to be kept in Courts.

The names and residences of the persons so exempted shall from time to time be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

Costs of commission rendered necessary by claiming privilege.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission unless the party requiring his evidence pays such costs.

642. No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

Persons exempt from arrest under civil process.

And, except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents and their witnesses acting in obedience to ■ summons, shall be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

643. When in a case pending before any Court there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 205, section 206, section 207, section 208, section 209, section 210, section 463, section 471, section 474, section 475, section 476, or section 477 of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate or take sufficient bail for his appearance before the Magistrate.

Procedure in case of certain offences.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it according to law.

■ \* \* ■

Language of  
subordinate  
Courts.

645. The language which, when this Code comes into force, is the language of any Court subordinate to a High Court, shall continue to be the language of such subordinate Court until the Local Government otherwise orders;

but it shall be lawful for the Local Government from time to time to declare what language shall be the language of every such Court.

\* \* \* \*

Power of  
Registrars of  
Small Cause  
Courts to  
state

646. Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he may state a case for the opinion of the Judge; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.

SEE Rule 3.

Miscellaneous  
proceedings.

647. The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction other than suits and appeals.

Admission of  
affidavits  
evidence.

The High Court may from time to time make rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate; and such rules, on being published in the local official Gazette, shall have the force of law.

648. Where any Court desires that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue ■ warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

Procedure when person to be arrested or property to be attached is outside district.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment;

and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him.

649. The rules contained in Chapter XIX shall apply to the execution of any judicial process for the arrest of ■ person or the sale of property or payment of money, which may be desired or ordered by ■ Civil Court in any civil proceeding.

Rules applicable to all civil process for arrest, sale or payment.

In the same chapter, the expression "Court which



passed a decree," or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit.

Application  
of rules as  
to witnesses.

650. The provisions of Chapters XIV and XV relating to witnesses shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code.

Service of  
foreign sum-  
monses.

650A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts: Provided that the Courts issuing such summonses have been established by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts.

The Governor General in Council may by like notification cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

Penalty for  
resisting ap-  
prehension or  
escaping  
from custody  
under Code or  
civil process.

651. Whoever offers any resistance or illegal obstruction to the lawful apprehension of himself under this Code, or under the warrant of any Civil or Revenue Court, or escapes or attempts to escape

from any custody in which he is lawfully detained under this Code or under such warrant, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

■                      \*                      ■                      \*

---

## PART IV.

# RULES OF PRACTICE.\*

*Rules made by the Court of Small Causes of Calcutta, with the previous sanction of the High Court, under section 9 of Act XV of 1882, "Presidency Small Cause Courts Act, 1882."*

1. In these Rules—unless there be something repugnant in the subject or context :—

(1) Words importing the masculine gender shall be taken to include females ;

(2) Words in the singular shall include the plural and *vice versâ* ;

(3) "The Act" means Act No. XV of 1882 of the Governor General in Council (The Presidency Small Cause Courts Act, 1882) ;

(4) "The Code" means the Code of Civil Procedure ;

(5) "Decree" includes any amount or sum of money, whether by way of costs or otherwise, directed by the Court to be paid under any decree or order or in any proceeding whatsoever ;

(6) "Person" includes any company or association, or body of individuals, whether incorporated or not ;

(7) "Pleader" includes every legal practitioner (not being ■■ advocate or mukhtyar) entitled to practise in the Court ;

(8) "Process" includes a summons to a witness, ■ notice, or any other process which has to be served through the Courts, not being a summons to ■ defendant or a warrant ;

(9) "Rule" means one of these Rules.

(10) "Summons" means a summons to ■ defendant.

### *The Judges.*

2. The Judges may sit apart or together at any time, and any one or more of the said Judges so sitting apart shall have all the judicial authority which is given by the Act to the Small Cause Court.

### *Registrar and other Officers of the Court.*

3. Cases stated by the Registrar under section 646 of the Code shall be stated for the opinion of the Chief Judge.

4. All matters and things required to be done by the Registrar in his capacity as chief ministerial officer of the Court may be done by the Clerk of the Court or his deputy or deputies.

5. The Registrar or such officer as may be appointed in that behalf shall grant a receipt or memorandum for every sum paid into Court as fees or costs, or on any account whatsoever, and no money shall be paid out of Court relating to the same matter without the production of such receipt or memorandum (where one has been granted), unless by order of the Court or Registrar.



6. Every serving officer, bailiff, or appraiser levying or receiving any money by virtue of ■ summons, process, or warrant, shall forthwith, or ■■ the earliest opportunity, pay the same to the proper officer of the Court.

7. The serving officer or bailiff serving ■ summons or process shall enter in a book to be kept by him for that purpose the time, place, and manner of service, and shall produce such book in Court, and shall (if required) on oath or solemn affirmation declare the truth of his entry therein.

8. The offices of the Court shall be open daily (except on authorized holidays), and the office hours shall be from half-past ten in the forenoon until half-past four in the afternoon. No money shall be paid out of Court on Saturday, nor before eleven in the forenoon on any other day, nor shall any money be received or paid out after half-past two in the afternoon, unless by order of the Court or of the Registrar.

#### *Pleaders.*

9. Pleaders shall be entitled to appear, plead, and act together with the parties in person or their recognized agents, as defined in section 37 of the Code, but not otherwise, unless appointed in writing.

10. A process served on a pleader duly appointed in writing by any party to a suit or proceeding shall be presumed to be duly communicated and made known to the party by whom such pleader has been appointed.

#### *The Complaint and Verification.*

11. The complaint shall be written on ■ form to be provided by the Court.

12. The verification of a plaintiff, application, or written statement shall be as follows :—

I, \_\_\_\_\_ (plaintiff, applicant, or defendant, as the case may be), do declare that what is stated herein is true to my knowledge, except as to matters and facts stated on information, and as to these I believe the same to be true.

13. In filing a complaint in which there are more defendants than one, the plaintiff shall also file a copy of his cause of action on a separate paper for each defendant (except the first) to be appended to, and served with, the summons on such defendant ; or the plaintiff may at his option similarly file concise statements of his cause of action on separate pieces of paper instead of copies of his cause of action. Such concise statements are as far as possible to be taken from the fourth schedule of the Code of Civil Procedure.

*Summons, Process, and Warrant.*

14. Summonses shall be issued and dated as of the day on which the complaint was filed.

15. A summons in a suit for an amount not exceeding five hundred rupees shall ordinarily be made returnable on the seventh day, and in a suit for an amount exceeding five hundred rupees on the fourteenth day, but in either case a summons may be made returnable in a shorter or longer period at the discretion of the Court.

16. Except under special circumstances and under the order of a Judge, a summons in a suit for an amount not exceeding five hundred rupees shall be served at least three clear days before the returnable

date, and in a suit for ■■■ amount exceeding five hundred rupees, at least six clear days before the returnable date.

17. A summons to a defendant resident or carrying on business out of the jurisdiction shall be made returnable on a date to be fixed by the Court, and shall be served so many clear days before such date as the Court shall order.

18. When the serving officer is unable to serve ■ summons as provided in sections 74, 75, 76, or 77 of the Code, it may be served by delivering or tendering it to some adult relative or member of the defendant's family or business establishment, or where the defendant occupies a room or lodging, by delivering or tendering it to the landlord of the house, provided the landlord also resides in the same house. But no place of business shall be deemed to be the place of business of the defendant unless he be the owner or one of the owners thereof.

19. When a summons, process, or warrant is to be served or executed, the person requiring such service or execution or some one on his behalf shall accompany the serving officer or bailiff to point out the person on whom, or the place where, such summons, process, or warrant is to be served or executed.

20. When a summons or process is to be served on any person who shall be living or serving on board any ship, vessel, or boat, and the same cannot be served personally, it may be served by delivering it to the senior officer on board, or to the person who for the time being may have charge of such ship, vessel, or boat.

21. When a summons or process is to be served under section 422 of the Code on ■ pilot or preventive officer engaged in actual service, it may be sent to the head of the office in which such pilot or preventive officer is employed for the purpose of being served on him.

22. Every application for executing a decree or for the ordinary process of the Court shall be on a form to be provided for that purpose, and shall be presented to the Clerk of the Court.

23. A summons to be served under section 89 of the Code shall be by registered letter.

24. A process to the Clerk of the Court to produce any record shall be served at least one clear day before the day fixed for the hearing of the matter in respect of which the process is served, unless the Court otherwise directs.

25. A notice required to be served through the Court shall be paid for as a process under section 72 of the Act.

26. A warrant issued under sections 250 and 251 of the Code shall be returnable within one month from the date thereof.

27. No summons, process, or warrant shall be served on or executed against—

(a) any person on a Sunday, Christmas-day, or Good Friday,

(b) any Hindu during the four days of Doorga Poojah, viz., Saptami, Ashtami, Navami, and Dashami,

(c) any Mahomedan on the following four days, Eed-ul-Fitr, Eed-uz-Zoha (or Bukri-Eed) and the last two days of Mohorum.



*Set-off.*

28. When ■ defendant is desirous of setting off any sum under section 111 of the Code, he shall file in Court the particulars of such set-off at least two clear days before the returnable date of the summons, unless the Court shall fix some other day for filing the same, and shall furnish the plaintiff with a copy of the same.

*Witnesses.*

29. The scale in the Schedule annexed to these Rules shall be the scale of expenses ordinarily allowed to witnesses under section 160 of the Code, provided that where a witness is an agent or servant of the party requiring his attendance, no expenses shall be allowed. In cases not provided for in the scale, the Court will exercise its discretion in allowing the expenses of the witness.

30. A witness shall, before he is sworn or solemnly affirmed, be entitled to be paid his expenses, if they have not been paid. . If a witness attend in one matter only he will be entitled to the full allowance. If he attend in more than one matter on the same day, he will be entitled to such proportionate part in each matter as the Court may direct.

31. When a tender of expenses is made at the time of service, a sum not less than the minimum rate allowed by the scale for the particular class of witness shall be tendered to him. In the event of any question arising ■ to the amount of the tender, the Court shall decide the same at the hearing of the matter in respect of which the witness is required to attend.

32. A witness residing out of the jurisdiction will be entitled to all travelling expenses reasonably and actually expended by him or likely to be expended by him, and will also, if detained in Calcutta, be allowed such a sum for subsistence-money and carriage hire ■ the Court, having regard to the scale of expenses, may consider reasonable.

*Compromise and Decree.*

33. Every suit or proceeding settled by agreement of the parties shall be reported in open Court to the Clerk of the Bench before which the suit or proceeding is pending, or to the Bench.

34. When the Court directs that any decree shall be paid by instalments, such instalments shall, in the absence of any direction to the contrary, be paid into Court monthly, and in default of payment of any one instalment, the whole decree or the balance thereof shall become due.

35. The ordinary decree against an executor, administrator, or legal representative shall be that the decree be levied out of the moveable property of the deceased in the hands of such executor, administrator, or legal representative.

36. When an ordinary decree has been made as mentioned in Rule 35, the plaintiff may apply to the Court that the decree may be executed against the defendant in person, and not in his representative capacity ; and the Court may, if it is satisfied that the defendant has misapplied the property of the deceased come to his hands and improperly withheld payment, make an order that the decree or any portion thereof

may be executed against the defendant in person, and not in his representative capacity.

37. When a defendant is sued as executor, administrator, or legal representative, the Court may, if it think any defence raised by him vexatious or groundless, and there be no property of the deceased in his hands, pass a decree against such defendant in person and not in his representative capacity.

*Applications generally.*

38. Every application (not being an application for execution of ■ decree) directed by the Code or by the Act, or by Rule 42, to be in writing, must contain :—

- (a) the name of the plaintiff,
- (b) the name of the defendant,
- (c) the relief or order applied for,
- (d) the grounds on which the relief or order is applied for.

It must be signed by the applicant and his pleader (if any), and, unless in these rules otherwise provided, must be verified in the same manner and by the same persons as a plaint. It shall ordinarily be presented to the particular Bench which passed the decree or order, or before which the suit or matter is pending.

39. In making an application, the applicant must be prepared with all necessary evidence for helping the Court to a proper determination of the matter.

40. On receiving an application, the Court shall (if necessary) fix a day for hearing the same.

41. When an application has been received and it is necessary to give notice to any person interested, ■ copy of the application, to be furnished by the appli-

cant, together with notice of the date fixed for its hearing, shall be served on such person in the same manner as ■ summons.

42. The following applications shall be in writing :—

(a) Under sections 99, 103 and 108, Chapters XXI and XXXI, sections 477 and 483 of the Code :

(b) Under sections 18 (leave to institute ■ suit), 37, and 60 of the Act :

(c) Under Rule 36.

43. An application under section 18 of the Act for leave of the Court to institute a suit shall, in addition to the particulars specified in Rule 38, contain :—

(a) the residence of the plaintiff, or where he carries on business,

(b) the residence of the defendant, or where he carries on business or works for gain,

(c) the cause of action, or whether it arose wholly or in part within the jurisdiction.

*Application for new trials or to set aside a dismissal or a decree.*

44. Every application under sections 99, 103 or 108 of the Code, or under section 37 of the Act, shall, when presented to the Court, be accompanied with a copy of such application, and such copy shall be served through the Court, or through some other Court, on the party as against whom the application is made, and ordinarily at least four clear days before the date fixed for the hearing of the application. Such service shall be made in the same manner as ■ service of summons. An application under section 37 of the Act need not be verified.



45. In every such application the grounds shall be fully and distinctly set out, and the applicant shall, at the hearing, be restricted to the grounds contained in his application.

46. Every application under section 37 of the Act shall, when the applicant has appeared at the original hearing by advocate or pleader, ordinarily be supported by a certificate of such advocate or pleader that in his opinion there are good grounds for the application.

47. Before any such application as is mentioned in Rule 44 is presented to the Court, the amount of the decree (if any) shall be paid into Court, and the applicant shall obtain a certificate of having done so from the proper officer of the Court. The Bench to which such application is presented may, if it thinks fit, dispense with such payment into Court, but in the case of an application, where both parties have appeared at any hearing of the original matter, only on security being given to the satisfaction of the Bench.

48. Every application under section 37 of the Act shall be heard before two Judges at least, one of whom shall be the Judge who tried the matter in respect of which the application is made and the other the Chief Judge. If the matter in respect of which the application is made was heard by the Chief Judge, one or more Judges shall sit with him to hear the application. The Chief Judge, or, in his absence, the Senior Judge, may, under special circumstances, direct that any Judges other than those

*Claims and complaints.*

49. When a claim is preferred or objection made under section 278 or 487 of the Code, or section 61 of the Act, in respect of any property attached or seized, or in respect of the proceeds or value thereof, the claimant or objector shall file a plaint in which the claimant or objector shall be the plaintiff and the execution-creditor, or the person who obtained the warrant, the defendant, and the matter shall then be treated as a suit.

50. Such plaint shall contain a statement of the particulars of the property claimed, or of the objection made, and of the grounds of the claim or objection.

51. When such a plaint has been filed, the sale of the property attached or seized shall be postponed pending the result of the suit. If the property has been sold and the money is in Court, the same shall be detained pending such result.

52. A complaint under section 328 of the Code shall be in writing and shall contain particulars of the obstruction complained of. It shall be in the form of an application, and be treated as such, but shall be verified by the decree-holder, or some person who on his behalf has accompanied the officer entrusted with the execution of the warrant, and is acquainted with the facts of the complaint.

*Recovery of possession of immoveable property.*

53. Applications under section 41 of the Act shall be in the form of ■ plaint in which the applicant shall be the plaintiff and the occupant the defendant, and the matter shall then be treated as ■ suit. For the purpose of ascertaining the value of

the suit, the annual value of the property in respect of which the claim is made shall be deemed to be the value of such property, and such annual value shall be stated in the plaint.

*Procedure in appeals and claims under Act IV of 1876 of the Bengal Council.*

54. When an appeal under section 114 or a claim under section 353 of Act IV of 1876 of the Bengal Council is preferred to the Small Cause Court, the appellant or claimant shall file an application containing the following particulars :—

- (a) the name of the appellant or claimant,
- (b) the name of the Corporation,
- (c) the amount of assessment made by the commissioners, or the sum claimed as damages, costs, or expenses,
- (d) the grounds on which the appeal or claim is preferred,
- (e) the relief or order applied for.

The application must be signed by the appellant or claimant and his pleader (if any) and must be verified in the same manner and by the same persons as a plaint. The matter shall then be treated as a suit.

*Miscellaneous.*

55. When a bond is given under section 29 of the Act as security for the payment of a decree, the obligor of such bond shall at the same time sign a warrant to confess judgment thereon.

56. No correspondence relating to suits or proceedings before the Court can be attended to, but any person having business in the Court or its offices

shall transact the same in person, or by a duly authorized agent or pleader.

57. The Court shall frame forms for every proceeding in the Court for which it shall think it necessary that a form be provided, and may from time to time alter any such form or forms.

*Scale of Witnesses' Expenses (Section 160 of the Code).*  
(SCHEDULE.)

		Maximum.	Minimum.
1	Common witnesses, as common soldiers, common mariners, labourers, carriers, domestic servants, sircars, mohātrās ...	None.	0 4 0
2	Tradesmen ...	4 0 0	1 0 0
3	Merchants, managers of banks, zemindars, gentlemen of property ...	12 0 0	2 0 0
4	Auctioneers, brokers, professional accountants ...	10 0 0	1 0 0
5	Professional men ...	10 0 0	2 0 0
6	Editors, engineers, and surveyors ...	10 0 0	2 0 0
7	Officers in civil employ drawing not less than Rs. 500 a month according to rank ...	12 0 0	6 0 0
8	Military and naval officers according to rank ...	12 0 0	6 0 0
9	Shroffs, banians, school-masters, and commanders and officers of ships ...	6 0 0	2 0 0
10	Articled and other clerks ...	6 0 0	2 0 0
11	Police inspectors, petty officers, military or marine ...	4 0 0	2 0 0
12	Custom-house officers, engine-drivers ...	4 0 0	2 0 0
13	Godown sircars ...	2 0 0	1 0 0
14	Females, according to station ...	4 0 0	0 8 0

*Note.*—When Government servants are summoned to give evidence in a Civil Court in the station in which they are employed, the parties summoning them need not be charged with their salaries for the time they are absent from duty. If, however, they are summoned to attend a Civil Court at a distance, and their attendance involves an absence of more than one day from their duties, the parties at whose instance they are summoned should be required to pay into Court an amount equal to their salaries for the time of their absence.—*Bengal Government Circular, No. 11, J. D., dated 18 October 1882.*



## PART V.

# APPENDIX.

### Appendix A.

#### RULES FOR THE GUIDANCE OF OFFICERS OF THE COURT AND THE TRANSACTION OF BUSINESS IN THE OFFICES OF THE COURT.

(See Act, Sec. 13.)

THE following rules are made for the guidance of the officers of the Court, under section 13 of Act XV of 1882:—

1. In these rules, unless there be something repugnant in the subject or context, "party to a suit," or "party to the suit," includes any party to a suit or to any proceeding not being a suit, or his recognized agent, as defined in section 37 of the Code of Civil Procedure, or his attorney, or his pleader, or his mooktear authorized to practise in the Court, or the clerk of such attorney, pleader, or mooktear. But nothing herein is intended to give authority to any clerk of an attorney, pleader, or mooktear to sign applications or papers which have to be filed in Court, or in the offices of the Court.

Officers of  
the Court.

2. Officers of the Court are not allowed to act for suitors in the Court in any way whatever. Heads of departments and other officers of the Court are directed to bring every instance of the infringement of this rule, of which they become aware, to the notice of the Registrar.

3. The attention of officers of the Court is also drawn to section 15 of the Presidency Small Cause Courts Act, 1882, and they are warned that any infringement of the provisions of that section will render the offender liable to dismissal.

Summons,  
processes and  
warrants.

4. Summonses are, as far as possible, to be distributed equally among the serving officers.

5. Processes are to bear the date at which they are signed and sealed. In the case of warrants, the date of expiry (if any) is also to be filled in.

6. A summons on a defendant in jail is to be issued in duplicate.

7. Warrants under sections 484 and 485 of the Code of Civil Procedure are to be issued in duplicate,—one to be served on the party and one to remain with the bailiff.

8. Suitors are ordinarily to apply at the Head Bailiff's office between the hours of half past ten and one o'clock ■ the day after processes have been applied for, in order to have such processes served.

9. Either the Record-keeper, or his assistant, is always to be present in the Record office, and no one (not being ■ officer of the Court) except as provided in section 217 of the Code of Civil Procedure, or rule 11 of these rules, shall have access to the records without ■ written order from a Judge or the Registrar or the Clerk of the Court. Records are only to be copied in the presence of the Record-keeper or Records. his assistant.

10. The records and exhibits shall be ranged and ticketed in order on the racks and shelves of the Record office, ■ that they may be easy of access.

11. Any party to a suit or proceeding, or his attorney or pleader, is, without the order of ■ Judge, entitled to take copies of the following documents and papers when in the custody of the Record office :—

Written judgments of a Judge or Registrar ; evidence taken in any form on paper ; written statements ; exhibits filed.

The above rule only entitled the party, or his attorney or pleader, to take the copies above referred to, in matters in which he himself is ■ party and not in other matters. The copies must be taken at the expense of the party himself.

12. Any party to a suit is also at any time entitled to a copy of the proceedings mentioned in section 217 of the Code of Civil Procedure, but such proceedings shall be copied by a Court officer and authenticated by the Clerk, or Deputy Clerk, and a fee of one rupee shall be charged in respect of such matter. Except as provided in this and the preceding rule, no copy shall be authenticated by any Court officer, except by order of a Judge or the Registrar, nor shall any copy be so authenticated except on payment of one rupee for each copy of each document so authenticated.

13. Powers-of-attorney in favor of attornies or pleaders may be filed in the Record office, provided the attorney or pleader writes across the back of the power "accepted" and the date on which it is so accepted.

14. When a record, required by any Judge, is sent for by his Clerk, the Clerk will note on a slip of paper what record is required, and will initial and put ■ date to the same : he will then send the same to the Record-keeper, who will make over the record to the peon, keeping the slip as his receipt for the same. The record shall, ■ soon ■ convenient (unless required by the Judge), be returned by the Clerk to the Record-keeper, who in turn shall return the slip to the Clerk.

15. When any record is produced before ■ Judge or the Registrar in connection with any case which is not disposed of on the day

appointed, the Bench Clerk shall return the summons with the record to the Record-keeper, noting the date to which the case has been adjourned, and the Record-keeper shall produce the record on the day so appointed.

16. Warrants ready for examination will, at the close of each day, be sent direct to the Record-keeper, who will place them in their respective books, and make them over with the books to the Deputy Clerk every morning. When the Deputy Clerk has done with the books, he will return them to the Record-keeper, who is directed to see that he receives them all back.

17. When a summons has been served on the Clerk of the Court to produce a record before any Bench, the Clerk will send the summons to the Record-keeper, who will send the record to the Clerk of that Bench and receive the same back (unless required by the Judge) as soon as may be convenient.

Attachment  
and sale.

18. The bailiff attaching property is (unless otherwise directed), two days after the attachment, to remove the property attached to the Court's godowns.

19. The bailiff attaching property is immediately to make a detailed inventory of such property on the back of the warrant, and to allow any person in charge of the property to take a copy of such inventory.

20. The bailiff will note on the warrant the amount of coolie and cart-hire paid for removing the property to the Court's godowns. This expenditure will be paid in the first instance by the person at whose instance the attachment is made, to be afterwards received from the debtor, or to form a charge to be deducted from the sale-proceeds.

21. If at the time of the attachment the person whose property has been attached desires to retain it on the premises till the date of sale, or for a shorter period, the property may be allowed to remain, but such person shall at once pay to the bailiff peon's wages at the daily rate of four annas for each peon required, for the period for which he desires that the property may remain on the premises. In calculating peon's wages a day is to be reckoned from noon of one day till noon the next day, and so on.

22. The bailiff will accordingly grant a receipt for the peon's wages required by him and pay the amount into Court as soon as possible to be credited in the suit to the person paying the same. On obtaining the court-receipt, the bailiff will make it over to the head of the Warrant Department. On production of the bailiff's receipt to the Warrant Department, the court-receipt will be made over to the person producing the bailiff's receipt. The person paying the money will also receive back any surplus that may be standing to his credit.

23. When a claim to attached property has been filed under section 278 of the Code of Civil Procedure, the claimant shall at once (if necessary) pay peon's wages from the date of filing the claim to the returnable date of the summons. After the returnable date of the summons, the peon's wages shall still be paid by the claimant unless the Court shall otherwise order. The amounts so paid shall be charged ■ costs in the claim suit. Any surplus paid by the claimant may be withdrawn by him.

24. The jemadar shall be responsible for the conduct of the peons in charge of attached property.

25. Property attached may be sold on the premises if the owner does not object, and the selling-officer is of opinion that the sale is not thereby likely to be prejudiced.

26. Heavy and unwieldy goods, for the removal of which considerable expense would have to be incurred, may be allowed to remain and be sold on the premises where they have been attached, if the attaching bailiff is of opinion that ■ reasonable price can be obtained by selling them there.

27. Sales held by the Court officers shall be for ready-money only, and property is on no account to be parted with until fully paid for. Property purchased is to be at the risk and expense of the purchaser from the time of sale, and must be paid for and removed before 5 p. m. on the day of the sale. If not ■ removed, it is to be re-sold as soon as convenient without further notice to the first purchaser at his risk, and he is to be held responsible for any loss that may arise on such re-sale. No warranty of any kind is to be given with property sold, but purchasers must satisfy themselves on all points before purchasing.

28. The full amount of sale-proceeds must be paid into Court by the selling-officer on the day following the day of sale at the latest, it being the duty of such selling-officer to collect and pay in such proceeds. It will be considered no answer on the part of the selling-officer that he has not received the money; but the money must be ■ paid in by him whether he has received it from the purchaser or not provided delivery has been given.

29. The above rules regarding attachment and sale do not apply to distress for rent.

30. No money is to be paid out of the Court, nor is any business to be transacted in the Court offices without the production of the summons receipt (where such ■ receipt has been granted) except by special order of a Judge or of the Registrar.

Payment of money into and out of Court.

31. Any person entitled to money in Court must present the summons or any other court-receipt relating to the same matter to the assistant in the warrant department, who will, in lieu thereof, grant ■



memorandum bearing the date of presentation, and initial the same. On this memorandum being returned by the holder to the Warrant Department, he will receive back the summons or other receipt together with a cheque, which will be passed by the Accountant and cashed by the Treasurer. Persons must be warned not to lose the memorandum so given to them.

32. Payment into Court may be made by a party to the suit, or by any person holding a power-of-attorney from the party paying, or by the servant of the party paying, or by any pleader entitled to practice in the Court, or by any other person under order of a Judge or of the Registrar or Clerk of the Court. Where a party to the suit is not the person paying, the court-receipt for such payment must state the name of the person who paid and on whose behalf it is paid.

General.

33. Except the filing of complaints and the payment of money into Court, no business is to be transacted in the offices of the Court except with a party to a suit.

34. Any receipt not taken by a party to a suit by 4 p. m. on the day on which it is signed, shall be sent to the Clerk, who shall, in his discretion, deliver it to the person entitled to the same.

35. When a case is to be referred to the High Court on judgment given contingent on the opinion of the High Court, the Clerk of the Court may, within 48 hours after such judgment has been given, receive security for costs as provided in section 70 of the Act. If the 48 hours expires on a holiday, the Clerk may take such security up to noon of the first day on which the Court opens.

36. The security for costs required under section 70 of the Act shall be on the following scale:—

In cases up to	Rs. 500	...	...	...	Rs. 100
Do. between	„ 500 and 1,000	...	...	...	„ 230
Do. do.	„ 1,000 and 1,500	...	...	...	„ 330
Do. do.	„ 1,500 and 2,000 and over	...	...	...	„ 460

## Appendix B.

### PROCLAMATION FIXING THE LIMITS OF CALCUTTA ISSUED BY THE GOVERNOR GENERAL IN COUNCIL ON THE 10TH SEPTEMBER, 1794.

(See Act, Sec. 17.)

WHEREAS in and by the 159th section, Chapter 52 of an Act passed in the 33rd year of His Majesty's reign, entitled "an Act for continuing  
" in the East India Company, for a limited time, the possession of the  
" British territories in India, together with their exclusive trade, under  
" certain limitations; for establishing further regulations for the Govern-  
" ment of the said territories, and the better administration of justice  
" within the same; for appropriating to certain uses the revenues and  
" profits of the said Company; and for making provision for the good  
" order and government of the town of Calcutta, Madras, and Bombay;"  
—it is enacted that, "if any question shall arise touching or concerning  
" the true limits and extent of the said towns and factories or any of  
" them, the same shall be enquired into by the Governor-General in  
" Council at Fort William in respect to the limits and extent of Calcutta,  
" and by the Governor in Council of Fort St. George in respect to the  
" limits and extent of Madras, and the Governor in Council at Bombay  
" in respect to the town of Bombay, and that such limits as the said  
" respective Governments, by order in Council, shall declare and pre-  
" scribe to be the limits of the said towns and factories respectively,  
" shall be held, deemed, and taken in law as the true limits of the same,  
" any custom or usage to the contrary notwithstanding." And whereas  
such question, as in and by the said clause of the said Act is meant and  
referred to, has arisen and been made with respect to the limits of the  
said town of Calcutta, and the Governor-General in Council in pur-  
suance of the authority vested in him by the said Act, has inquired  
into the same, and by an order duly made in Council has declared and  
prescribed the limit of the said town, and has directed and commanded  
the same to be publicly notified, in order that the said limit, so de-  
clared and prescribed, may be known to the inhabitants of the said  
town, and to all persons whom the same may in any wise concern: *It*  
*is hereby publicly notified;* that the town of Calcutta, in respect to all  
legal intents and purposes, extends to and is bounded by the several  
lines, limits, and boundaries hereinafter mentioned and described, that  
is to say, —

*The Northern boundary* is declared to commence, and does accord-  
ingly commence, on the west side of the River Hooghly, at the post  
or mete No. 22, situated at the north point of Colonel Robertson's

Garden called Jackapore, immediately opposite to the mouth of the brook called Chitpore Nullah, ■ Baug Bazar Nullah, and the said Northern boundary is from thence declared to continue and is continued accordingly, by a line drawn across the river from the aforesaid point to the south corner of the mouth of the said nullah, into the post or mete No. 1, near the foot of the Chitpore Bridge, and from thence by ■ line drawn eastward, and passing the south end of the said bridge to No. 2, and from thence, along the south side of the said nullah or brook, to the post or mete No. 3, and thence on to the post or mete No. 4, passing the old Powder Mill Bazar, until it reaches the foot of the bridge leading to Dum-Dum, where the post or mete No. 5 is.

*The Eastern boundary* is declared to commence, and does accordingly commence, at the said post or mete No. 5, and is declared to continue and does accordingly continue by a line traced along the west or inner side of the Maharatta ditch or entrenchment, and the east side of the road adjoining thereunto, until it reaches the post or mete No. 6, at the northern angle next to the road of an enclosure called Halsee Bagaun, which said Halsee Bagaun is included within the said town of Calcutta, and from the said northern angle by a line drawn eastward along the southern side of the ditch or trench, which encloses the said Halsee Bagaun to the post or mete marked No. 6, and from thence southward, along the western side of the said ditch or trench, to the post or mete also marked No. 6, and from the said last mentioned post or mete western along the northern side of the said ditch or trench until the said line reaches the mark No. 7, where there is a thannah and from the said last mentioned post or mete, by a line drawn southward, and on the western side of the Maharatta entrenchment and the eastern side of the Bytaconnah Road, ■ far ■ the remains of the said Maharatta entrenchment are visible to the post or mete No. 8, at the corner of Rajah Ramlochan's bazar, and of the road leading to Ballea Ghaut, immediately opposite to Narrain Chatterjee's road, and from the said last mentioned post or mete No. ■ by a line continued in ■ southern direction, passing through Mirzapore, and drawn along the eastern side of the Bytaconnah road, and leaving the Portuguese Burying-ground to the east, until it reaches the Bytaconnah Tree, where the two posts or metes marked respectively No. 9 and No. 10 are fixed on each side of the road, opposite to the Bow Bazar Road and Bytaconnah Bazar, and from the last mentioned post or mete marked No. 10, by ■ line drawn along the eastern side of the said Bytaconnah Road to the post or mete No. 11, opposite to Goopee Baboo's Bazar, which bazar is situated between the Jaun Bazar and Durruntollah Roads, and from thence in the same direction until the said line reaches the post or mete No. 12, at the point or turning of the said road towards the west leaving Dhee Seerampore

on the east, and thereby including within the limits of Calcutta the Protestant Burying-ground, Chowringhee, and the land thereunto belonging called Dhee Birjee.

*The Southern boundary* is declared to commence, and does accordingly commence, from the last mentioned post or mete No. 12, and is declared to continue, and does accordingly continue, by a line drawn from thence to the westward, with a little inclination to the southward, along the southern side of the public road excluding Dhee Chuckerbeer, and including Banneapokah, otherwise called Areeapokah, in Dhee Birjee, until the said line reaches the beginning of the Russapuglah Road, immediately opposite to Chowringhee high road, where the post or mete No. 13 is fixed, and from the said post or mete No. 13, by a line running to the westward along the southern side of the public road to the post or mete No. 14, fixed between the Thannah and the General Hospital, and passing on westerly to the post or mete No. 15 at the foot of Allipore Bridge, and excluding the General Hospital aforesaid, the Hospital for Insanes, and the Hospital burying-ground, situated in Dhee Babanipore, and from thence and from the south side of the said Allipore Bridge by a line drawn, and continued along the south side of the nullah, commonly called Tolley's Nullah, at high water mark, to the post or mete marked No. 16, and from thence passing the foot or south end of Surmon's Bridge, commonly called Kidderpore Bridge, and extending to the mouth of the said nullah, where it enters the River Hooghly, excluding Waston's Dock, and to the post or mete marked No. 17, and then proceeding from east to west across the said River Hooghly to the south-east point of Major Kyd's garden, and excluding the said garden and village of Sheebpore, at which point a post or mete marked No. 18 is directed to be fixed; and

*The Western boundary* is declared to commence, and does accordingly commence, at the said point where the said post or mete marked No. 18 is fixed, and is declared to continue, and does accordingly continue, from thence by a line drawn at low water mark along the western side of the said River Hooghly, but excluding the ghauts of Rankissenpore, Howrah, and Sulkeah, where posts or metes are fixed, marked respectively Nos. 19, 20 and 21, until the said line reaches the northern point of Colonel Robertson's garden or Jackapore aforesaid, where a post or mete is fixed, marked No. 22, and immediately opposite to the post or mete No. 1, at Chitpore Bridge.

Declared and proclaimed by order of the Governor-General in Council of Fort William in Bengal, this 10th day of September 1794.

(Sd.) E. HAY,

*Secy. to the Government.*



## Appendix C.

### CAUSES OF ACTION, PLAINT FORMS, AND CONCISE STATEMENTS.

(See Act, Sec. 18, and Code, Sec. 50.)

For the ordinary classes of cases in the Small Cause Court, the subjoined common forms of "causes of action" and the circumstances constituting the same and where and when they arose may be followed in framing plaints. They are mere suggestions, and need not be adopted: but they may be found convenient for simple cases. In cases for breach of mercantile contracts and such other cases as from their nature require to be stated in greater detail, the Forms set forth in the Fourth Schedule to the Civil Procedure Code, hereto added, may be adopted. When in such cases the cause of action is likely to extend beyond the space allowed for the same in the plaint, the whole of it should be written on a separate sheet of foolscap and filed with the plaint form—the words "*vide annexed sheet*" being inserted in the space allowed for the purpose in the plaint. The writing must in all cases be clear and legible.

In filing a plaint in which there are more defendants than one, the plaintiff shall also file a copy of his cause of action on a separate paper for each defendant (except the first) to be appended to and served with the summons on such defendant; or the plaintiff may at his option similarly file concise statements of his cause of action on separate pieces of paper instead of copies of his cause of action. Such concise statements are, as far as possible, to be taken from the Fourth Schedule of the Code of Civil Procedure, *post*.

### COMMON FORMS.

#### No. 1.

#### FOR GOODS SOLD AND DELIVERED.

For the price [or balance of price] of rice [cloth, rations or sundry goods] sold and delivered to the defendant on the       day of  
18   [or on sundry dates between the       day of       18 , and  
     day of       18 ] at Calcutta, now due and owing, and the  
plaintiff prays judgment for the amount stated below with costs :

Goods sold . . . . . Rs.

Received . . . . . „

Balance due . . . . . Rs.

## No. 2.

## FOR MONEY LENT.

For money lent to the defendant ■ the       day of       18 [or  
on sundry dates, between the       day of       18 and the  
day of       18 ], with [or without] interest at the rate of  
payable on demand [or on the       day of       18 ], at Calcutta,  
and the plaintiff prays judgment for the amount stated below with  
costs :

Principal . . . . . Rs.

Interest . . . . . „

Received . . . . . Rs.

Balance due . . . . . „

## No. 3.

## ON A PROMISSORY NOTE, BOND OR KHUT.

For principal [and interest] now overdue on a promissory note  
[bond or khut] made by the defendant in favor of the plaintiff on  
the       day of       18 , bearing interest at the rate of  
and payable on demand [or on the       day of       18 , or  
days after date, or by instalments] at Calcutta, and the plaintiff prays  
judgment for the amount stated below with costs :

Principal . . . . . Rs.

Interest . . . . . „

Received . . . . . Rs.

Balance due . . . . . „

[Where the plaintiff is an endorsee of a promissory note, the form  
should run “made by the defendant in favor of A B, and by him  
endorsed to the plaintiff,” and if there have been several endorsements  
they should all be set out.]

## No. 4.

## FOR SALARY OR WAGES AND MONEY PAID.

For salary [or wages] due to the plaintiff for services rendered to  
the defendant from the       day of       18 to the       day of  
18 , at the rate of       rupees per month, as a clerk [or

bearer, &c.] at Calcutta [and for                  rupees paid to the use of the defendant between the said dates], and the plaintiff prays judgment for the amount stated below with costs :

Salary [or wages] . . . . .	Rs.
Money paid . . . . .	"
Received . . . . .	Rs.
Balance . . . . .	"

[Where no money has been paid the count for money should be omitted.]

#### No. 5.

##### FOR WORK AND LABOUR DONE AND MATERIALS SUPPLIED.

For the price of work and labor as a mason [carpenter, tailor, &c.], and the cost of sundry materials supplied on the                  day of 18 [or between the                  day of 18 and the                  day of 18 ] to the defendant at Calcutta, and the plaintiff prays judgment for the amount stated below with costs :

Work and labor . . . . .	Rs.
Materials . . . . .	"
Received . . . . .	Rs.
Balance due . . . . .	"

[Where no materials have been supplied the count for materials should be omitted.]

#### No. 6.

##### FOR RENT ON A LEASE OR AGREEMENT.

For rent of No.                  Street, Calcutta [or of a piece of land at                  ], for                  months from the                  day of 18 to the                  day of 18 , reserved under a Lease [or agreement] entered into by plaintiff and defendant on the                  day of 18 , and the plaintiff prays judgment for the amount stated below with costs :

— months' rent . . . . .	Rs.
Received . . . . .	"
Balance due . . . . .	Rs.

[If money is claimed for rates, taxes, &c., a count for money paid may be inserted as in No. 4.]

## No. 7.

## FOR USE AND OCCUPATION.

For the use and occupation of No.        Street, Calcutta [or of ■  
piece of land at        ], which the defendant hired from plaintiff [or  
holds and occupies of the plaintiff] at a monthly rate of        and of  
which        months are now due, viz., from        to        , and  
the plaintiff prays judgment for the amount stated below with costs:

Rent for        months . . . . . Rs.

Received . . . . . "

Balance due . . . . . Rs.

[If any money is claimed for rates, taxes, &c., a count for money  
paid may be inserted ■ in No. 4.]

## No. 8.

## FOR BOARD AND LODGING.

For board and lodging supplied by the plaintiff to the defendant  
or to the defendant's wife and family] from the        day of  
18 to the        day of        18 , at Calcutta, at the rate of  
rupees per day [or month], and the plaintiff prays judgment for the  
amount stated below with costs.

Board and lodging for        months . . . Rs.

Received . . . . . "

Balance due . . . . . Rs.

[If any money has been paid on account of defendant, a count for  
money paid may be inserted as in No. 4.]

## No. 9.

## FOR MONEY PAID AT THE REQUEST OR TO THE USE ■ ■ ■ DEFENDANT.

For money paid to E F on the        day of        18 [or on sun-  
dry dates between the        day of        and the        day of        ]  
at the request [or to the use] of the defendant at Calcutta, and the  
plaintiff prays judgment for the amount stated below with costs:

Money paid . . . . . Rs.

Received . . . . . "

Balance due . . . . . Rs.



## No. 10.

## FOR MONEY HAD AND RECEIVED.

For money had and received by the defendant for the use of the plaintiff, and unaccounted for: *viz.*, on the       day of       18  
[or on sundry dates between the       day of       18       and  
the       day of       18       ] and payable to the plaintiff at  
Calcutta, and the plaintiff prays judgment for the amount stated below  
with costs:

Amount received . . . . .	Rs.
Paid . . . . .	"
Balance due . . . . .	Rs.

## No. 11.

## FOR MONEY ADVANCED FOR WORK TO BE DONE.

For money advanced to the defendant on the       day of  
18       , at Calcutta [or on sundry dates between the       day of  
18       , and the       day of       18       ], for work  
as ■ tailor [carpenter, shoe-maker, mason, &c.], but the defendant  
has failed to perform the said work, and the plaintiff prays judgment  
for the amount stated below with costs:

Money advanced . . . . .	Rs.
Received by work or re-payment . . . . .	"
Balance due . . . . .	Rs.

## No. 12.

## FOR USE AND HIRE.

For the use and hire by the defendant of the plaintiff's cargo boat  
[carriage, &c.], at Calcutta, on the       day of       18       [or  
on sundry dates between the       day of       18       and  
the       day of       18       ], and the plaintiff prays judgment  
for the amount stated below with costs:

Hire . . . . .	Rs.
Demurrage . . . . .	"
Received . . . . .	Rs.
Balance due . . . . .	"

[In the case of a cargo boat where demurrage is claimed, ■ count  
may be added "and for       demurrages."]

## No. 13.

## ON AN ACCOUNT STATED.

For money due on an account stated between the plaintiff and defendant, at Calcutta, on the       day of       18       , for monies which had been advanced to the defendant [or for monies lent, or for goods sold and delivered, &c.], and plaintiff prays judgment for the amount stated below with costs :

As per account stated . . . . . Rs.

Received . . . . . „

Balance due . . . . . Rs.

## No. 14.

## FOR THE CONVERSION OF MOVEABLE PROPERTY.

For compensation for that the plaintiff being in possession of sundry goods, the defendant on the       day of       18       , at Calcutta, converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same, whereby the plaintiff has sustained damages and prays judgment for the amount stated below with costs :

Claim . . . . . Rs.

## No. 15.

## FOR ASSAULT.

For an assault for that on the       day of       18       , at Calcutta, the defendant assaulted and beat the plaintiff, who prays judgment for the sum stated below as compensation with costs :

Claim . . . . . Rs.

## No. 16.

## ON A COMPROMISE AGREEMENT.

On an agreement entered into at Calcutta between the plaintiff and the defendant on the       day of       18       for compromising a suit brought by the plaintiff against the defendant for money lent [or for goods sold, &c.], and plaintiff prays judgment for the amount stated below with costs :

Former suit and costs . . . . . Rs.

Received . . . . . „

Balance due . . . . . Rs.

## No. 17.

## EJECTMENT (SECTION 41).

To recover possession of a house [or a certain piece of land] of the plaintiff, of which the defendant is the tenant [or occupier], situated in , Calcutta, and bounded ■ follows : ; of the annual value of , and which the defendant refuses to deliver up to the plaintiff in compliance with ■ request made in that behalf, and the plaintiff prays ■ order for possession of the said property.

## No. 18.

## CLAIM TO ATTACHED PROPERTY (SECTION 278 ■ 478, C. P. C.)

The plaintiff claims the following property, viz. [state particulars], attached in execution of decree [or before judgment] on the day of 18 , in suit No. of 18 , in which is plaintiff and is defendant: the grounds of the claim are [state grounds].

### THE FOURTH SCHEDULE TO THE CODE OF CIVIL PROCEDURE.

This Schedule is not extended to the Small Cause Court, but the forms may be followed, so far ■ they are applicable, in framing plaints.

## A.—PLAINTS.

## No. 1.

## FOR MONEY LENT.

(Title.)

A. B., the above-named plaintiff, states ■ follows:—

1. That, on the day of 18 , at he lent the defendant rupees repayable on demand [or on the day of ].

2. That the defendant has not paid the same, except rupees paid on the day of 18 .

[If the plaintiff claims exemption from any law of limitation, say:—

3. The plaintiff was a minor [or insane] from the day of till the day of ].

4. The plaintiff prays judgment for rupees, with interest at per cent. from the day of 18 .

[NOTE.—The object of stating when the debt is to be repaid is merely to fix ■ date for interest. If, therefore, interest is not claimed, the statement may be omitted.]

## No. 2.

## FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(Title.)

*A. B.* and *G. H.*, the above-named plaintiffs, state as follows:—

1. That, on the                      day of                      18                      , at                      , the defendant received                      rupees [or                      cheque on the Bank for                      rupees] from                      *E. F.*, for the use of the plaintiffs.

2. That the defendant has not paid [or delivered] the same accordingly.

3. The plaintiffs pray judgment for                      rupees, with interest                      per cent., from the                      day of                      18                      .

## No. 3.

## FOR PRICE OF GOODS SOLD BY A FACTOR.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That, on the                      day of                      18                      , at                      , he and *E. F.*, since deceased, delivered to the defendant [*one thousand barrels of flour, five hundred maunds of rice, or as the case may be*] for sale upon commission.

2. That, on the                      day of                      18                      [or on some day unknown to the plaintiff, before the                      day of                      18                      ], the defendant sold the said merchandize for                      rupees.

3. That the commission and expenses of the defendant thereon amount to                      rupees.

4. That, on the                      day of                      18                      , the plaintiff demanded from the defendant the proceeds of the said merchandize.

5. That he has not paid the same.

[Demand of judgment.]

## No. 4.

## FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE OF FACT.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That, on the                      day of                      18                      , at                      , the plaintiff agreed to buy and the defendant agreed to sell                      bars of silver at                      annas per tola of fine silver.

2. That the plaintiff received the said bars of silver from the defendant.



*E. F.*, who ■■■ paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant rupees ■■■ annas therefor.

3. That each of the said bars did contain only 1,200 tolas of fine silver.

4. That the defendant has not repaid the sum so overpaid.

[*Demand of judgment.*]

[NOTE.—A demand of repayment is not necessary, but it may affect the question of interest ■■■ the costs.]

### No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That, on the ■■■ day of ■■■ 18 ■■■, at ■■■, at the request [or by the authority] of the defendant, the plaintiff paid to one *E. F.* ■■■ rupees.

2. That, in consideration thereof, the defendant promised [or became bound] to pay the same to the plaintiff on demand [or as the case may be].

3. That [on the ■■■ day of ■■■ 18 ■■■, the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[*Demand of judgment.*]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication.]

### No. 6.

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(*Title.*)

*A. B.*, the above-named plaintiff, states ■■■ follows:—

1. That, on the ■■■ day of ■■■ 18 ■■■, at ■■■, *E. F.* of ■■■, deceased, sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods].

2. That the defendant promised to pay ■■■ rupees for the said goods on delivery [or ■■■ the ■■■ day of ■■■ some day before the plaint was filed.]

3. That he has not paid the same.

4. That the said *E. F.*, in his lifetime, made his will, whereby he appointed the plaintiff executor thereof.

5. That, on the            day of            18            , the said *E. F.* died.

6. That on the            day of            probate of the said will ■■■ granted to the plaintiff by the Court of

7. The plaintiff as executor ■■ aforesaid [*Demand of judgment*].

[NOTE.—If ■ day was fixed for payment, it should be stated ■■ furnishing ■ date for the commencement of interest.]

---

No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title.)

*A. B.*, the above-named plaintiff, states ■■ follows:—

1. That, on the            day of            18            , at plaintiff sold and delivered to the defendant [sundry articles of house-furniture], but no express agreement was made as to the price.

2. That the same were reasonably worth            rupees.

3. That the defendant has not paid the same.

[*Demand of judgment*.]

[NOTE.—The law implies a promise to pay so much ■■ the goods are reasonably worth.]

---

No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

(Title.)

*A. B.*, the above-named plaintiff, states ■■ follows:—

1. That, ■■ the            day of            18            , at plaintiff sold to the defendant [one hundred barrels of flour] and, at the request of the defendant, delivered the ■■■ to one *E. F.*

2. That the defendant promised to pay to the plaintiff            rupees therefor.

3. That he has not paid the same.

[*Demand of judgment*.]

## No. 9.

FOR NECESSARIES FURNISHED ■■■ FAMILY OF DEFENDANT'S TESTATOR  
WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states ■ follows :—

1. That, on the            day of            18    , at  
plaintiff furnished to [*Mary Jones*], the wife of [*James Jones*], deceased,  
at her request, sundry articles of [*food and clothing*], but no express  
agreement was made ■ to the price.
2. That the same were necessary for her.
3. That the same were reasonably worth            rupees.
4. That the said *James Jones* refused to pay the same.
5. That the defendant is the executor of the last will of the said  
*James Jones*.

[Demand of judgment.]

## No. 10.

FOR GOODS SOLD AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18    , at            ,  
the plaintiff sold to E. F., of            , deceased, [*all the crops then  
growing on his farm in* ].
2. That the said E. F. promised to pay the plaintiff            rupees  
for the same.
3. That he did not pay the same.
4. That the defendant is administrator of the estate of the said  
E. F.

[Demand of judgment.]

## No. 11.

FOR GOODS SOLD AT ■ REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18    , at            , E. F.,  
of            sold to the defendant [*all the fruit growing in his  
orchard in* ], but ■ express agreement was made as to the  
price.
2. That the same was reasonably worth            rupees.

3. That the defendant has not paid the \_\_\_\_\_

4. That, on the \_\_\_\_\_ day of \_\_\_\_\_, the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic and appointed the plaintiff committee of his estate, with the usual powers for the management thereof.

5. The plaintiff as committee aforesaid [*Demand of judgment*].

[NOTE.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following:—]

4. That, on the \_\_\_\_\_ day of \_\_\_\_\_, the Civil Court of \_\_\_\_\_ duly adjudged the said *E. F.* to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff manager of his estate.

5. The plaintiff manager as aforesaid.

[*Demand of judgment.*]

---

No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, *E. F.*, of \_\_\_\_\_ agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that the said *E. F.* should pay for the same upon delivery thereof \_\_\_\_\_ rupees.

2. That the plaintiff made the said goods, and on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, offered to deliver the \_\_\_\_\_ to the said *E. F.*, and has ever since been ready and willing so to do.

3. That the said *E. F.* has not accepted the said goods or paid for the same.

4. That, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic, and appointed the defendant committee of his estate.

5. The plaintiff prays judgment for \_\_\_\_\_ rupees with interest from the \_\_\_\_\_ day of \_\_\_\_\_, at the rate of \_\_\_\_\_ per cent. per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

---



## No. 13.

FOR DEFICIENCY UPON ■ RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18            , at            , plaintiff put up at auction sundry [*articles of merchandize*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale, should be re-sold by auction on his account, of which condition the defendant had notice.

2. That the defendant purchased [*one crate of crockery*] at the said auction at the price of            rupees.

3. That the plaintiff ■ ready and willing to deliver the same to the defendant on the said day and for [*ten days*] thereafter, of which the defendant had notice.

4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.

5. That, on the            day of            18            , at            , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for            rupees.

6. That the expenses attendant upon such re-sale amounted to            rupees.

7. That the defendant has not paid the deficiency thus arising, amounting to            rupees.

[*Demand of judgment.*]

[NOTE to § 4.—Unless the seller agreed to deliver, the purchaser must fetch the goods; see Act IX of 1872, section 93.]

## No. 14.

FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18            , at            , the plaintiff sold [and conveyed] to the defendant [the house and compound No.            , in the city of            , or ■ farm known ■            , in            , or a piece of land lying, &c.]

2. That the defendant promised to pay the plaintiff            rupees for the said [house and compound, or farm, or land].

3. That he has not paid the same.

[*Demand of judgment.*]

[NOTE.—Where there has been ■ actual conveyance, say, in § 1, “sold to the defendant the house, &c., and placed him in possession of the same.”]

## No. 15.

FOR THE PURCHASE-MONEY OF IMMOVEABLE PROPERTY CONTRACTED TO  
BE SOLD, ■■■ CONVEYED.

(Title.)

A. B., the above-named plaintiff, states ■ follows :—

1. That, on the            day of            18            , at  
the plaintiff and defendant mutually agreed that the plaintiff should sell  
to the defendant, and that the defendant should purchase from the  
plaintiff [the house No.            , in the town of            , or one  
hundred bigahs of land in            , bounded by the East Indian  
railroad, and by other lands of the plaintiff] for            rupees.

2. That, on the            day of            18            , at            , the  
plaintiff tendered [or was ready and willing, and offered to execute] ■  
sufficient instrument of conveyance of the said property to the defend-  
ant, on payment of the said sum, and still is ready and willing to  
execute the same.

3. That the defendant has not paid the said sum.

[Demand of judgment.]

## No. 16.

FOR SERVICES AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18            , at            , the  
defendant [hired plaintiff as a clerk, at the salary of            rupees per  
year].

2. That from the [said day] until the            day of  
18            , the plaintiff served the defendant as his [clerk].

3. That the defendant has not paid the said salary.

[Demand of judgment.]

## No. 17.

FOR SERVICES AT ■ REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That between the            day of            18            and the  
day of            18            , at            , plaintiff [executed sundry  
drawings, designs and diagrams] for the defendant, at his request ; but  
no express agreement was made as to the sum to be paid for such  
services.

2. That the said services were reasonably worth            rupees.

3. That the defendant has not paid the same.

[Demand of judgment.]

## No. 18.

FOR SERVICES ■■■ MATERIALS AT ■ FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states ■ follows :—

1. That, on the            day of            18    , at            ,  
 plaintiff [furnished the paper for and printed one thousand copies of ■  
 book called            ] for the defendant, at his request [and  
 delivered the ■■■ to him].

2. That the defendant promised to pay            rupees therefor.

3. That he has not paid the same.

[Demand of judgment.]

## No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18    , at            ,  
 plaintiff built a house [known as No.            , in            ], and  
 furnished the materials therefor, for the defendant, at his request, but  
 no express agreement was made as to the price to be paid for such  
 work and materials.

2. That the said work and materials were reasonably worth  
 rupees.

3. That the defendant has not paid the same.

[Demand of judgment.]

## No. 20.

FOR RENT ■■■ ■ LEASE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18    , at            ,  
 the defendant entered into a contract with the plaintiff, under their  
 hands, a copy of which is hereto annexed.

[Or state the substance of the contract.]

2. That the defendant has not paid the rent of the [month] ending  
 on the            day of            18    , amounting to  
 rupees.

*Another form.*

1. That the plaintiff let to the defendant a house, No. 27, Chowringhee, for seven years, to hold from the       day of       18  
at       rupees a year, payable quarterly.
2. That of such rent       quarters are due and unpaid.

[Demand of judgment.]

No. 21.

## FOR USE AND OCCUPATION AT A FIXED RENT.

(Title.)

A. B., the above-named plaintiff, states — follows :—

1. That, on the       day of       18       , at       ,  
the defendant hired from the plaintiff [the house No.       ,  
street], at the rent of       rupees, payable on the first day of

2. That the defendant occupied the said premises from the  
day of       18       to the       day of       .

3. That the defendant has not paid       rupees, being the part  
of said rent due on the first day of       18       .

[Demand of judgment.]

No. 22.

## FOR USE AND OCCUPATION AT A REASONABLE RENT.

(Title.)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows :—

1. That the defendant occupied the [house No.       ,  
street], by permission of the said X. Y., from the       day of       ,  
18       , until the       day of       18       , and no agree-  
ment       made as to payment for the use of the said premises.

2. That the       of the said premises for the said period       reason-  
ably worth       rupees.

3. That the defendant has not paid the       .

4. The plaintiff       such executor       aforesaid prays judgment for  
rupees.



## No. 23.

## FOR BOARD AND LODGING.

(Title.)

A. B., the above-named plaintiff, states — follows :—

1. That, from the            day of            18    , until the day of            18    , the defendant occupied certain rooms in the house [No.            ,            street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance and other necessaries.

2. That, in consideration thereof, the defendant promised to pay [or, That no agreement — made as to payment for such meat, drink, attendance or necessaries, but the same were reasonably worth] the sum of            rupees.

3. That the defendant has not paid the same.

[Demand of judgment.]

## No. 24.

## FOR FREIGHT OF GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18    , at            , plaintiff transported in [his barge, or otherwise] [one thousand barrels of flour, or sundry goods], from            to            , at the request of the defendant.

2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] — freight thereon [or, That no agreement was made — to payment for such transportation, but such transportation was reasonably worth            rupees.]

3. That the defendant has not paid the same.

[Demand of judgment.]

## No. 25.

## FOR PASSAGE-MONEY.

(Title.)

A. B., the above-named plaintiff, states — follows :—

1. That, on the            day of            18    , plaintiff conveyed the defendant [in his ship, called the            ], from            to            at his request.

2. That the defendant promised to pay the plaintiff                      rupees therefor [or, That no agreement      made as to the price of the said passage, but the said passage was reasonably worth                      rupees].

3. That the defendant has not paid the same.

[Demand of judgment.]

---

No. 26.

ON AN AWARD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the              day of              18      , at              , the plaintiff and defendant, having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of E. F. and G. H.,      arbitrators [or entered into      agreement, a copy of which is hereto annexed].

2. That, on the              day of              18      , at              , the said arbitrators awarded that the defendant should [pay the plaintiff              rupees].

3. That the defendant has not paid the same.

[Demand of judgment.]

[NOTE.—This will apply where the agreement to refer is not filed in Court.]

---

No. 27.

ON A FOREIGN JUDGMENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the              day of              18      , at              , in the State [or Kingdom] of              , the Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff              rupees, with interest from the said date.

2. That the defendant has not paid the same.

[Demand of judgment.]

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF  
MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18    , at            ,  
the defendant, by his bond, became bound to the plaintiff in the sum  
of            rupees to be paid by the defendant to the plaintiff, subject  
to a condition that if the defendant should pay to the plaintiff  
rupees half-yearly on the            day of            and the            day  
of            in every year during the life of the plaintiff, the said  
bond should be void.

2. That afterwards, on the            day of            18    , the  
sum of            rupees for            of the said half-yearly payments  
of the said annuity became due to the plaintiff and is still unpaid.

[Demand of judgment.]

No. 29.

PAYEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18    , at            ,  
the defendant, by his promissory note, now overdue, promised to pay to  
the plaintiff            rupees            [days] after date.

2. That he has not paid the            [except            rupees, paid on  
the            day of            18    ].

[Demand of judgment.]

[NOTE.—Where the note is payable after notice, for paragraphs 1 and 2  
substitute —]

1. That, on the            day of            18    , at            ,  
the defendant, by his promissory note, promised to pay to the plain-  
tiff            rupees            months after notice.

2. That notice            afterwards given by the plaintiff to the defend-  
ant to pay the same            months after the said notice.

3. That the said time for payment has elapsed, but the defendant  
has not paid the same.

[Where the note is payable at a particular place, say—]

1. That, on the            day of            18   , at           ,  
the defendant, by his promissory note, now overdue, promised to pay  
to the plaintiff [at Messrs. A. & Co.'s, Madras]            rupees  
months after date.

2. That the said note was duly presented for payment [at Messrs.  
A. & Co.'s] aforesaid, but has not been paid.

---

WRITTEN STATEMENT OF THE DEFENDANT.

IN    COURT, &c.

C. D., the above-named defendant, states as follows:—

1. The defendant made the note sued upon under the following  
circumstances: The plaintiff and defendant had for some years been  
in partnership    indigo-manufacturers, and it had been agreed be-  
tween them that they should dissolve partnership, that the plaintiff  
should retire from the business, and that the defendant should take  
over the whole of the partnership-assets and liabilities and should pay  
the plaintiff the value of his share in the assets after deducting the  
liabilities.

2. The plaintiff thereupon undertook to examine the partnership-  
books and inquire into the state of the partnership-assets and liabili-  
ties; and he did accordingly examine the said books and make the  
said inquiries, and he thereupon represented to the defendant that the  
assets of the firm exceeded Rs. 1,00,000, and that the liabilities of the  
firm were less than Rs. 30,000, whereas the fact was that the assets of  
the firm were less than Rs. 50,000, and the liabilities of the firm largely  
exceeded the assets.

3. The misrepresentations mentioned in the second paragraph of  
this statement induced the defendant to make the note now sued on, and  
there never was any other consideration for the making of such note.

---

No. 30.

FIRST INDORSEER AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states    follows:—

1. That, on the            day of            18   , at           ,  
the defendant, by his promissory note, now overdue, promised to  
pay to the order of E. F. [or    E. F. or order] rupees  
[            days after date].

2. That the said E. F. indorsed the    to the plaintiff.

3. That the defendant has not paid the same.

[Demand of judgment.]



## No. 31.

## SUBSEQUENT INDORSEE AGAINST MAKEE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. [*As in the last preceding form.*]
2. That the same was, by the indorsement of the said E. F. and of G. H. and I. J. [*or and other*], transferred to the plaintiff.
3. That the defendant has not paid the same.

[*Demand of judgment.*]

## No. 32.

## FIRST INDORSEE AGAINST FIRST INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That E. F., on the       day of       18       , at       , by his promissory note, now overdue, promised to pay to the defendant or order       rupees       months after date.
2. That the defendant indorsed the same to the plaintiff.
3. That, on the       day of       18       , the       was duly presented for payment, but was not paid.

[*Or state facts excusing want of presentment.*]

4. That the defendant had notice thereof.
5. That he has not paid the same.

[*Demand of judgment.*]

## No. 33.

## SUBSEQUENT INDORSER AGAINST FIRST INDORSER ; THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to       E. F. a promissory note, now overdue, made [*or purporting to have been made*] by one G. H.,       the       day of       18       , at       , to the order of the defendant, for the sum of       rupees [*payable       days after date*].
2. That the same was, by the indorsement of the said E. F. [*and others*], transferred to the plaintiff [*or, That the said E. F. indorsed the same to the plaintiff*].

- 3, 4 and 5. [*Same as 3, 4 and 5 of the last preceding form.*]

[*Demand of judgment.*]

## No. 34.

## SUBSEQUENT INDORSEE AGAINST ■■■ IMMEDIATE INDORSER.

(Title.)

*A. B.*, the above-named plaintiff, states ■ follows :—

1. That the defendant indorsed to him a promissory note, now overdue, made [or purporting to have been made] by one *E. F.*, on the       day of       18       , at       , to the order of one *G. H.*, for the sum of       rupees [payable       days after date], and indorsed by the said *G. H.* to the defendant.

2, 3 and 4. [Same as in 3, 4 and 5 in Form No. 33.]

[Demand of judgment.]

## No. 35.

## SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

*A. B.*, the above-named plaintiff, states ■ follows :—

1. That a promissory note, now overdue, made [or purporting to have been made] by one *E. F.*, on the       day of       18       , at       , to the order of one *G. H.*, for the sum of       rupees [payable       days after date], and indorsed by the said *G. H.* to the defendant, was by the indorsement of the defendant [and others] transferred to the plaintiff.

2, 3 and 4. [As in No. 33.]

[Demand of judgment.]

## No. 36.

## SUBSEQUENT INDORSER AGAINST MAKER AND FIRST AND SECOND INDORSER.

(Title.)

*A. B.*, the above-named plaintiff, states ■ follows :—

1. That, on the       day of       18       , at       , the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*,       rupees [       months after date.]

2. That the said *E. F.* indorsed the ■■■ to the defendant, *G. H.*, who indorsed it to the plaintiff.

3. That, on the       day of       18       , the same was presented [or state facts excusing want of presentment] to the said *C. D.* for payment, but was not paid.

4. That the said *E. F.* and *G. H.* had notice thereof.

5. That they have not paid the same.

[Demand of judgment.]

## No. 37.

## DRAWER AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states — follows :—

1. That, on the            day of            18            , at  
by his bill of exchange, now overdue, the plaintiff required the defend-  
ant to pay to him            rupees [            days after date, or sight,  
thereof.]

2. That the defendant accepted the said bill. [*If the bill is payable  
at a certain time after sight, the date of acceptance should be stated;  
otherwise it is not necessary.*]

3. That he has not paid the same.

4. That by reason thereof the plaintiff incurred expenses in and  
about the presenting and noting of the bill, and incidental to the dis-  
honour thereof.

[Demand of judgment.]

[NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say—]

1. That on, &c., at &c., by his bill of exchange, now overdue,  
directed to the defendant, the plaintiff required the defendant to pay.  
to E. F. or order            rupees            months after date.

2. That the plaintiff delivered the said bill to the said E. F.  
on

3. That the defendant accepted the said bill, but did not pay the  
same, whereupon the same was returned to the plaintiff.

## No. 38.

## PAYEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states — follows :—

1. That, on the            day of            18            , the defendant  
accepted a bill of exchange, now overdue, made [or purporting to have  
been made] by one E. F., on the            day of            18            ,  
at            , requiring the defendant to pay to the plaintiff  
rupees            after sight thereof.

2. That he has not paid the same.

[Demand of judgment.]

No. 39.

## FIRST INDORSEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That, on the       day of       18   , the defendant accepted a bill of exchange, now overdue, made [or purporting to have been made] by one E. F., on the       day of       18   , at       , requiring the defendant to pay to the order of one G. H.       rupees       after sight thereof.
2. That the said G. H. indorsed the same to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 40.

## SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. [As in the last preceding form, to the end of article 1.]
2. That by the indorsement of the said G. H. [and others], the same was transferred to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 41.

## PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That, on the       day of       18   , at       , the defendant by his bill of exchange, directed to E. F., required the said E. F. to pay to the plaintiff       rupees [       days after sight.]
2. That, on the       day of       18   , the same       duly presented to the said E. F. for acceptance, and       dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]



## No. 42.

## FIRST INDORSEE AGAINST FIRST INDORSER.

(Title)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to the plaintiff ■ bill of exchange, now overdue, made [or purporting to have been made] by one E. F., on the       day of       18   , at       , requiring one G. H. to pay to the order of the defendant       rupees [       days] after sight [or after date, or at sight] thereof, [and accepted by the said G. H. ■ the       day of       18   ].
2. That, on the       day of       18   , the same was presented to the said G. H. for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

## No. 43.

## SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one E. F. a bill of exchange, now overdue, made [or purporting to have been made] by one G. H., on the       day of       18   , at       , requiring one I. J. to pay to the order of the defendant       rupees       days after sight thereof [or otherwise], and accepted by the said I. J. on the       day of       18   . [This clause may be omitted if not according to the fact.]
2. That the same was, by the indorsement of the said E. F. [and others], transferred to the plaintiff.
3. That, on the       day of       18   , the same was presented to the said I. J. for payment, and was dishonoured.
4. That the defendant had due notice thereof.
5. That he has not paid the same.

[Demand of judgment.]

## No. 44.

## SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one E. F., on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, requiring one G. H. to pay to the order of I. J. \_\_\_\_\_ rupees \_\_\_\_\_ days after sight thereof [or otherwise] [accepted by the said G. H.] and indorsed by the said I. J. to the defendant.
2. That, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the same \_\_\_\_\_ presented to the said G. H. for payment, and \_\_\_\_\_ dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment]

## No. 45.

## SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That a bill of exchange, now overdue, made [or purporting to have been made] by one E. F., on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, requiring one G. H. to pay to the order of one I. J. \_\_\_\_\_ rupees \_\_\_\_\_ days after sight thereof [or otherwise] [accepted by the said G. H.] and indorsed by the said I. J. to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.
2. That, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the same \_\_\_\_\_ presented to the said G. H. for payment, and \_\_\_\_\_ dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

## No. 46.

## INDORSEE AGAINST DRAWER, ACCEPTOR AND INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, the defendant C. D., by his bill of exchange, \_\_\_\_\_ overdue, directed to the defendant E. F., required the said E. F. to pay to the

order of the defendant *G. H.*                      rupees [                      days after sight thereof.]

2. That, on the                      day of                      18                      , the said *E. F.* accepted the same.

3. That the said *G. H.* indorsed the                      to the plaintiff.

4. That, on the                      day of                      18                      , the same was presented to the said *E. F.* for payment, and was dishonoured.

5. That the other defendants had due notice thereof.

6. That they have not paid the same.

[*Demand of judgment.*]

No. 47.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.  
(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That, on the                      day of                      18                      , at                      , the defendant by his bill of exchange, drawn in Calcutta, required one *E. F.* to pay to the plaintiff in [London]                      pounds sterling [sixty days] after sight thereof.

2. That, on the                      day of                      18                      , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[5. That the value of                      pounds sterling, at the time of the service of notice of protest on the defendant, was                      rupees annas.]

Wherefore the plaintiff demands judgment against the defendant for                      rupees, with [ten per centum] compensation and interest from the                      day of                      18                      .

No. 48.

PAYEE AGAINST ACCEPTOR.  
(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That, on the                      day of                      18                      , at                      , one *E. F.*, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff                      rupees after date [or                      days after sight] thereof.

2. That, on the                      day of                      18                      , the defendant accepted the said bill.

3. That he has not paid the same.

[*Demand of judgment.*]

\*                      \*                      ■                      \*                      \*\*                      ■                      \*

## No. 54.

## ON A FIRE-INSURANCE POLICY.

(Title.)

A. B., the above-named plaintiff, states ■ follows:—

1. That plaintiff [was the owner of, *or*] had an interest in ■ [dwelling-house, known ■ No. ■ street, in the city of ■] at the time of its destruction [*or* injury] by fire ■ hereinafter mentioned.

2. That, on the ■ day of ■ 18 ■, at ■ in consideration of ■ rupees [to them paid], the defendant executed to the plaintiff a policy of insurance on the said [premises], ■ copy of which is hereto annexed [*or state its tenor*].

3. That, on the ■ day of ■ 18 ■, the said [dwelling-house] was totally destroyed [*or* greatly damaged] by fire.

4. That the plaintiff's loss thereby was ■ rupees.

5. That, on the ■ day of ■ 18 ■, he furnished the defendant with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[Demand of judgment.]

## \*No. 55.

## AGAINST SURETY FOR PAYMENT OF RENT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That, on the ■ day of ■ 18 ■, at ■ one E. F. hired from the plaintiff, for the term of ■ years the [house No. ■ street] at the annual rent of ■ rupees, payable [monthly].

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said E. F., to guarantee the punctual payment of the said rent.

3. That the rent aforesaid for the month of 18 ■, amounting to ■ rupees, has not been paid.

[If, by the terms of the agreement, notice is required to be given to the surety, add:—]

4. That, on the ■ day of ■ 18 ■, the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. That he has not paid the same.

[Demand of judgment.]

**B.—PLAINTS FOR COMPENSATION FOR BREACH OF  
CONTRACT.**

No. 56.

**FOR BREACH OF AGREEMENT TO CONVEY LAND.**

*(Title.)*

**A. B.**, the above-named plaintiff, states ■ follows:—

1. That, on the            day of            18    , at            , the plaintiff and defendant entered into an agreement, under their hands, of which ■ copy is hereto annexed.

[Or, That on, &c., the defendant agreed with the plaintiff that, in consideration of ■ deposit of            rupees then paid, and of the further sum of [ten thousand] rupees payable ■ hereinafter mentioned, he would, on the            day of            18    , at            , execute to the plaintiff ■ sufficient conveyance of [the house No.            , street in the city of            , free from all incumbrances; and the plaintiff agreed to pay [ten thousand] rupees for the same on delivery thereof.]

2. That, on the            day of            18    , the plaintiff demanded the conveyance of the said property from the defendant and tendered            rupees to the defendant [or, That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part.]

3. That the defendant has not executed any conveyance of the said property to the plaintiff [or, That there is a mortgage upon the said property, made by            to            , for            rupees, registered in the office of            , on the            day of            18    , and still unsatisfied, or any other defect of title].

4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5. The plaintiff prays judgment for            rupees compensation.

No. 57.

**FOR BREACH ■ AGREEMENT TO PURCHASE LAND.**

*(Title.)*

**A. B.**, the above-named plaintiff, states ■ follows:—

1. That, on the            day of            18    , at            ,



the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[Or, That on the            day of            18    , at            , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff, forty bighas of land in the village of            for            rupees.]

2. That, on the            day of            18    , at            , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [or was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument] on the payment by the defendant of the said sum.

3. That the defendant has not paid the same.

[Demand of judgment.]

No. 58.

*Another Form.*

FOR NOT COMPLETING A PURCHASE OF IMMOVEABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That by an agreement dated the            day of            18    , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant, and the defendant should purchase from the plaintiff, a house and land at the price of            rupees, upon the terms and conditions following (that is to say)—

(a) That the defendant should pay the plaintiff a deposit of            rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the            day of            18    , on which day the said purchase should be completed.

(b) That the plaintiff should deduce and make a good title to the said premises on or before the            day of            18    , and            payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[Demand of judgment.]

No. 59.

FOR NOT DELIVERING GOODS SOLD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That, on the            day of            18    , at            , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the day of            18    ], and that the plaintiff should pay therefor rupees on delivery.

2. That, on the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[Demand of judgment.]

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That, on the            day of            18    , at            , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his services rupees [monthly].

2. That, on the            day of            18    , the plaintiff entered upon the service of the defendant ■ aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3. That, on the            day of            18    , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[Demand of judgment.]

## No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT  
NEVER TOOK EFFECT.*(Title.)**A. B.*, the above-named plaintiff, states as follows:—1. [*As in last preceding form.*]2. That, on the            day of            18    , at            ,  
the plaintiff offered to enter upon the service of the defendant, and  
has ever since been ready and willing so to do.3. That the defendant refused to permit the plaintiff to enter upon  
such service, or to pay him for his services.*[Demand of judgment.]*

## No. 62.

## FOR BREACH OF CONTRACT TO SERVE.

*(Title.)**A. B.*, the above-named plaintiff, states as follows:—1. That, on the            day of            18    , at            ,  
the plaintiff and defendant mutually agreed that the plaintiff should  
employ the defendant at an [annual] compensation of  
rupees, and that the defendant should serve the plaintiff as [an artist]  
for the term of [one year].2. That the plaintiff has always been ready and willing to perform  
his part of the said agreement [and on the            day of  
18    offered so to do].3. That the defendant [entered upon] the service of the plaintiff  
on the above-mentioned day, but afterwards, on the            day of  
18    , he refused to serve the plaintiff as aforesaid.*[Demand of judgment.]*

## No. 63.

## AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

*(Title.)**A. B.*, the above-named plaintiff, states as follows:—1. That, on the            day of            18    , at            ,  
the plaintiff and defendant entered into an agreement, of which a copy  
is hereto annexed.*[Or state the tenor of the contract.]*[2. That the plaintiff duly performed all the conditions of the said  
agreement on his part.]

3. That the defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner].

[Demand of judgment.]

---

No. 64.

BY ■■■ MASTER AGAINST THE FATHER ■■ GUARDIAN OF  
■■ APPRENTICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That, on the            day of            18    , at            ,  
the defendant entered into an agreement, under his hand and seal,\* ■  
copy of which is hereto annexed.

[Or state the tenor of the contract.]

2. That after the making of the said agreement the plaintiff received the said [apprentice] into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3. That, on the            day of            18    , the said [apprentice] wilfully absented himself from the service of the plaintiff, and continues so to do.

[Demand of judgment.]

\* The form given in Act XIX of 1850 requires the seal of the father or guardian.

---

No. 65.

BY THE APPRENTICE AGAINST THE MASTER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That, on the            day of            18    , at            ,  
the defendant entered into ■■ agreement with the plaintiff and his [father], E. F., under their hands and seals, ■ copy of which is hereto annexed.

2. That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not instructed the plaintiff in the business of            [or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment].

[Demand of judgment.]

## No. 66.

## ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That, on the            day of            18    , at            ,  
plaintiff employed one E. F. as a clerk.

2. That, on the            day of            18    , at            ,  
the defendant agreed with the plaintiff, that if the said E. F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding            rupees.

[Or, 2. That, at the same time and place, the defendant bound himself to the plaintiff, by writing under his hand, in the penal sum of            rupees, conditioned that if the said E. F. should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void but not otherwise.]

[Or, 2. That, at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.]

3. That between the            day of            18    , and the day of            18    , the said E. F. received money and other property, amounting to the value of            rupees, for the use of the plaintiff, for which he has not accounted to him, and the            still remains due and unpaid.

[Demand of judgment.]

## No. 67.

## BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That, on the            day of            18    , at            ,  
the defendant, by            instrument in writing, let to the plaintiff [the house No.            , street] for the term of            years, contracting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.



3. That, on the                      day of                      , during the said term, one *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal].

[*Demand of judgment.*]

---

No. 68.

FOR BREACH OF WARRANTY OF MOVEABLES.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. That, on the                      day of                      18                      , at                      , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him                      rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[*Demand of judgment.*]

---

No. 69.

ON AN AGREEMENT OF INDEMNITY.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows :—

1. That, on the                      day of                      18                      , at                      , the plaintiff and defendant, being partners in trade under the firm of *A. B. & C. D.*, dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership-property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That, on the                      day of                      18                      [a judgment was recovered against the plaintiff and defendant by one *E. F.*, in the

High Court of Judicature at \_\_\_\_\_, upon a debt due from the  
said firm to the said *E. F.*, and \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18 ]  
the plaintiff paid \_\_\_\_\_ rupees [in satisfaction of the same.]

That the defendant has not paid the same to the plaintiff.

[*Demand of judgment.*]

—  
No. 70.

BY SHIPOWNER AGAINST FREIGHTOR FOR NOT LOADING.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

1. That, on the \_\_\_\_\_ day of \_\_\_\_\_ 18 , at \_\_\_\_\_,  
the plaintiff and defendant entered into \_\_\_\_\_ agreement, a copy of which  
is hereto annexed.

[*Or*, 1. That, on \_\_\_\_\_, at \_\_\_\_\_, the plaintiff and  
defendant agreed by charter-party that the defendant should deliver  
to the plaintiff's ship \_\_\_\_\_ at \_\_\_\_\_, on the \_\_\_\_\_ day of  
\_\_\_\_\_ 18 , five hundred tons of merchandize, which she  
should carry to \_\_\_\_\_, and there deliver, on payment of  
freight; and that the defendant should have \_\_\_\_\_ days for load-  
ing, \_\_\_\_\_ days for discharge, and \_\_\_\_\_ days for demurrage, if required,  
at \_\_\_\_\_ rupees per day.]

2. That at the time fixed by the said agreement the plaintiff was  
ready and willing, and offered, to receive [the said merchandize, *or*  
the merchandize mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed,  
but the defendant has not delivered the said merchandize to the said  
vessel.

Wherefore, the plaintiff demands judgment for \_\_\_\_\_ rupees for  
demurrage and \_\_\_\_\_ rupees additional for compensation.

—  
C.—PLAINTS FOR COMPENSATION UPON WRONGS.

—  
No. 71.

FOR TRESPASS ON LANDS.

(*Title.*)

*A. B.*, the above-named plaintiff, states as follows:—

That, \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 18 , at \_\_\_\_\_, the  
defendant entered upon certain land of the plaintiff, known as \_\_\_\_\_  
[and depastured the same with cattle, trod down the grass, cut the  
timber, and otherwise injured the same.]

[*Demand of judgment.*]

No. 72.

## FOR TRESPASS ■ ENTERING A DWELLING-HOUSE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant entered a dwelling-house of the plaintiff called \_\_\_\_\_, and made a noise and disturbance therein for ■ long time, and broke open the doors of the said dwelling-house, and removed, took and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for ■ long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[Demand of judgment.]

---

No. 73.

## FOR TRESPASS ON MOVEABLES.

(Title.)

A. B., the above-named plaintiff, states ■ follows :—

1. That, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, at \_\_\_\_\_, the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [or seized and took the plaintiff's goods, that is to say, iron, rice and household furniture, or as the case may be, and carried away the same and disposed of them to his own use] :

or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for ■ long time.

2. That the plaintiff ■ thereby deprived of the use of the ■ and bullocks during that time, and incurred expense in feeding them and in getting them restored to him; and was also prevented from selling them at \_\_\_\_\_ fair, as he otherwise would have done, and the said cows and bullocks ■ diminished in value to the plaintiff [otherwise, state the injury according to the facts].

[Demand of judgment.]

## No. 74.

## FOR THE CONVERSION OF MOVEABLE PROPERTY.

*(Title.)*

A. B., the above-named plaintiff, states ■ follows : —

1. That, on the            day of            18    , plaintiff ■ in possession of certain goods described in the schedule hereto annexed [or of one thousand barrels of flour].

2. That, on that day, at            , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the ■ and possession of the same.

*[Demand of judgment.]**The schedule.*

## No. 75.

## AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

*(Title.)*

A. B., the above-named plaintiff, states ■ follows : —

1. That, on the            day of            18    , at            , the defendant, in consideration of the payment to him of rupees [or            rupees per barrel, per month, &c.], agreed to keep in his godown [one hundred barrels of flour], and to deliver the same to the plaintiff on payment of the said sum.

2. That thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour.]

3. That, on the            day of            18    , the plaintiff requested the defendant to deliver the said goods, and tendered him            rupees [or the full amount of storage due thereon], but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said goods to E. F., and the same are lost to the plaintiff.

*[Demand of judgment.]*

## No. 76.

## FOR PROCURING PROPERTY BY FRAUD.

*(Title.)*

A. B., the above-named plaintiff, states as follows : —

1. That, on the            day of            18    , at            , the defendant, for the purpose of inducing the plaintiff to sell him

certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth                      rupees over all his liabilities].

2. That the plaintiff                      thereby induced to sell [and deliver] to the defendant [dry goods] of the value of                      rupees.

3. That the said representations were false [*or state the particular falsehoods*], and were then known by the defendant to be so.

4. That the defendant has not paid for the said goods. [*Or, if the goods were not delivered, That the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended                      rupees.*]

[*Demand of judgment.*]

---

No. 77.

FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER  
PERSON.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That, on the                      day of                      18                      , at                      , the defendant represented to the plaintiff that one E. F. was solvent and in good credit, and worth                      rupees over all his liabilities [*or that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit.*]

2. That the plaintiff was thereby induced to sell to the said E. F. [rice] of the value of                      rupees [on                      months' credit].

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or to deceive and injure the plaintiff*].

■                      ■                      ■                      \*                      ■                      ■                      ■

[*Demand of judgment.*]

---

No. 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called                      and situate in                      , and of ■ well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ■ into the said well to supply the ■ to flow or run without being fouled or polluted.



2. That, ■ the            day of            18   , the defendant wrongfully fouled and polluted the said well and the said water therein, and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the ■ and benefit of the said well and water.

[Demand of judgment.]

---

No. 79.

FOR CARRYING ON A NOXIOUS MANUFACTURE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called            situate in            .

2. That ever since the            day of            18   , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and live stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4. That by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep ■ he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock therefrom, and has been prevented from having so beneficial and healthy ■ use and occupation of the said lands ■ he otherwise would have had.

[Demand of judgment.]

---

No. 80.

FOR OBSTRUCTING ■ WAY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of            ].

2. That he was entitled to a right of way from the said [house]

over ■ certain field to ■ public highway and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, or ■ foot] at all times of the year.

3. That, ■ the            day of            18    , defendant wrongfully obstructed the said way, ■ that the plaintiff could not pass [with vehicles, or on foot, or in any manner] along the said way [and has ever since wrongfully obstructed the same].

4. [*State special damage, if any.*]

[*Demand of judgment.*]

---

*Another Form.*

1. That the defendant wrongfully dug ■ trench and heaped up earth and stones in the public highway leading from            to            so as to obstruct it.

2. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[*Demand of judgment.*]

---

No. 81.

FOR DIVERTING ■ WATER-COURSE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of ■ mill situated on ■ [stream] known as the            , in the village of            , district of            .

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. That, on the            day of            18    , the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ■ into the plaintiff's mill.

4. That by reason thereof, the plaintiff has been unable to grind more than            sacks per day, whereas, before the said diversion of water, he ■ able to grind            sacks per day.

[*Demand of judgment.*]

---

No. 82.

FOR OBSTRUCTING A RIGHT ■ ■ ■ WATER FOR IRRIGATION.

(Title.)

A. B., the above-named plaintiff, states ■ follows :—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. That, on the            day of            the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[Demand of judgment.]

No. 83.

FOR WASTE ■ ■ ■ A LESSOR.

(Title.)

A. B., the above-named plaintiff, states ■ follows :—

1. That, on the            day of            18   , the defendant hired from him [the house No.            ,            street] for the term of            .

2. That the defendant occupied the ■ ■ ■ under such hiring.

3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors; or otherwise specify the injuries as far as possible.]

The plaintiff prays judgment for            rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

That, on the            day of            18   , at            defendant assaulted and beat him.

The plaintiff prays judgment for            rupees compensation.

No. 85.

FOR ASSAULT AND BATTERY, ■ ■ ■ SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That, on the            day of            18   , at            the defendant assaulted and beat him until he became insensible.

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay rupees for medical attendance, and has been ever since disabled [from using his right arm]. [*Or otherwise state the damage, as the may be.*]

[*Demand of judgment.*]

---

No. 86.

FOR ASSAULT AND FALSE IMPRISONMENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That, on the            day of            18    , at            , the defendant assaulted the plaintiff and imprisoned him for days [or hours]; [*state special damage, if any, thus:—*]

2. That, by reason thereof, the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [*or otherwise, as the case may be.*]

[*Demand of judgment.*]

---

No. 87.

FOR INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That, on the            day of            18    , the defendants were common carriers of passengers by railway between            and            .

2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3. That while he was such passenger, at            [or            ] the station of            ; or between the station of            and            ], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendant's servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as a [salesman].

[*Demand of judgment.*]

[*Or thus* :—2. That on that day the defendants by their servants so negligently and unskilfully drove and managed ■ engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, &c., as in, § 3.]

---

No. 88.

FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

(*Title.*)

A. B., the above-named plaintiff, states ■ follows :—

1. The plaintiff is a shoemaker, carrying on business at ■■■■  
The defendant is ■ merchant of ■■■■

2. On the [23rd May 1875], the plaintiff was walking eastward along Chowringhee in the city of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harington Street, which is ■ street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Harington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left ■■■■ was broken, and he was bruised and injured on the side and back, as well ■ internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims ■■■■ rupees damages.

---

(*Title.*)

*Written Statement of Defendant.*

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it ■■■■ under the charge or control of the defendant's servants. The carriage belongs to [Messrs. E. F. and G. H.] of ■■■■ Street, Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs. E. F. and G. H.]



2. The defendant does not admit that the said carriage was turned out of Harington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaint.

\* \* \* \* \*

### No. 114.

#### FORMS OF CONCISE STATEMENT.

(See Rule at top.)

Money lent.	The plaintiff's claim is	rs. for money lent [and interest].
Several demands.	The plaintiff's claim is price of goods sold, and for interest.	rs., whereof                      rs. is for the rs. for money lent, and                      rs.
Rent.	The plaintiff's claim is	rs. for arrears of rent.
Salary, &c.	The plaintiff's claim is [or, as the case may be].	rs. for arrears of salary as a clerk
Interest.	The plaintiff's claim is	rs. for interest upon money lent.
	* * *	* * *
Freight, &c.	The plaintiff's claim is	rs. for freight and demurrage.
Banker's balance.	The plaintiff's claim is defendant as a banker.	rs. for money deposited with the
Fees, &c., as pleader.	The plaintiff's claim is	rs. for fees for work done [and
	rs. for money expended] as a pleader.	
Commission.	The plaintiff's claim is	rs. for commission earned as [state
	character—as auctioneer, cotton-broker, &c.]	
Medical attendance.	The plaintiff's claim is	rs. for medical attendances.
Return of premium.	The plaintiff's claim is upon policies of insurance.	rs. for a return of premium paid
Warehouse-rent.	The plaintiff's claim is	rs. for the warehousing of goods.
Carriage of goods.	The plaintiff's claim is railway.	■ for the carriage of goods by
Use and occupation of house.	The plaintiff's claim is	rs. for the use and occupation of a house.
Hire of goods.	The plaintiff's claim is	rs. for the hire of [furniture].
Work done.	The plaintiff's claim is	rs. for work done as a [surveyor].
Board and lodging.	The plaintiff's claim is	rs. for board and lodging.

The plaintiff's claim is of X. Y.	rs. for the [board, lodging and] tuition	Schooling.
The plaintiff's claim is ant ■ pleader [or factor, or collector, or &c.] of the plaintiff.	rs. for money received by the defend-	Money received.
The plaintiff's claim is under colour of the office of	rs. for fees received by the defendant	Fees of office.
The plaintiff's claim is for the carriage of goods by railway.	rs. for a return of money overcharged	Money over- paid.
The plaintiff's claim is by the defendant ■	rs. for a return of fees overcharged	
The plaintiff's claim is with the defendant as stake-holder.	rs. for ■ return of money deposited	Return of money by stake-holder.
The plaintiff's claim is ant ■ stake-holder, and become payable to plaintiff.	rs. for money entrusted to the defend-	Money won from stake- holder.
The plaintiff's claim is to the defendant as agent of the plaintiff.	rs. for a return of money entrusted	Money entrusted to agent.
The plaintiff's claim is from the plaintiff by fraud.	rs. for a return of money obtained	Money obtained by fraud.
The plaintiff's claim is defendant by mistake.	rs. for a return of money paid to the	Money paid by mistake.
The plaintiff's claim is defendant for [work to be done, or work left undone; or a bill to be taken up, or a bill not taken up; or &c.]	rs. for a return of money paid to the	Money paid for considera- tion which has failed.
The plaintiff's claim is deposit upon shares to be allotted.	rs. for a return of money paid as ■	
The plaintiff's claim is as his surety.	rs. for money paid for the defendant	Money paid by surety for defendant.
The plaintiff's claim is the defendant.	rs. for money paid for rent due by	Rent paid.
The plaintiff's claim is [or indorsed] for the defendant's accommodation.	rs. upon a bill of exchange accepted	Money paid on accommo- dation-bill.
The plaintiff's claim is money paid by the plaintiff as surety.	rs. for a contribution in respect of	Contribution by surety.
The plaintiff's claim is joint debt of the plaintiff and the defendant, paid by the plaintiff.	rs. for a contribution in respect of ■	By co-debtor.
The plaintiff's claim is shares, against which the defendant was bound to indemnify the plaintiff.	rs. for money paid for calls upon	Money paid for calls.
The plaintiff's claim is	rs. for money payable under an award.	Money payable under award.
The plaintiff's claim is the life of X. Y., deceased.	rs. upon a policy of insurance upon	Life-policy.

Money-bond.	The plaintiff's claim is rs. and interest.	■ upon a bond to secure payment of
Foreign judgment.	The plaintiff's claim is Court in [the Empire of Russia].	rs. upon ■ judgment of the
Bills of exchange, &c.	The plaintiff's claim is defendant.	rs. upon ■ cheque drawn by the de-
	The plaintiff's claim is [or drawn, or indorsed] by the defendant.	rs. upon a bill of exchange accepted
	The plaintiff's claim is indorsed] by the defendant.	rs. upon ■ promissory note made [or
	The plaintiff's claim is acceptor, and against the defendant, C. D., ■ drawer [or indorser] of a bill of exchange.	rs. against the defendant, A. B., as
Surety.	The plaintiff's claim is the price of goods sold.	rs. against the defendant ■ surety for
	The plaintiff's claim is principal, and against the defendant, C. D., ■ surety, for the price of goods sold [or for arrears of rent, or for money lent, or for money re- ceived by the defendant, A. B., ■ traveller for the plaintiff, or &c.]	rs. against the defendant, A. B., as
Calls.	The plaintiff's claim is	rs. for calls upon shares.

■   ■   \*   \*   \*   \*   ■

#### *Damages and other Claims.*

Agent, &c.	The plaintiff's claim is for damages for breach of ■ contract to em- ploy the plaintiff as traveller.
	The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment ■ traveller [and rs. for arrears of wages].
	The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.
	The plaintiff's claim is for damages for breach of duty ■ factor [or &c.] of the plaintiff [and rs. for money received as factor, or, &c.]
Apprentices.	The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [or plaintiff].
Arbitration.	The plaintiff's claim is for damages for non-compliance with the award of X. Y.
Assault, &c.	The plaintiff's claim is for damages for assault [and false imprison- ment ■ ■ ■ ].
By husband and wife.	The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff, C. D. By husband and wife.
Against hus- band and wife.	The plaintiff's claim is for damages for assault by the defendant, C. D.
Pleader.	The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same]. Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same]. Pledge.

The plaintiff's claim is for damages for negligence in the custody of furniture [or a carriage] lent on hire, [and for wrongfully, &c.] Hire.

The plaintiff's claim is for damages for wrongfully neglecting [or refusing] to pay the plaintiff's cheque. Banker.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. Bill.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of ■ Bond.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. Carrier.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charter-party of ship [*Mary*]. Charter-party.

The plaintiff's claim is ■ \* for damages for detaining the plaintiff's household furniture, &c. Claim for detaining goods; damages.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c. Damages for depriving of goods.

The plaintiff's claim is for damages for improperly distraining. Wrongful distress.

[*This Form shall be sufficient, whether the distress complained of be wrongful or excessive, or irregular.*]

The plaintiff's claim is to recover possession of a house, No. ■, in Ejectment.  
Street, or of ■ farm called Blackacre, situate in the  
of ■ in the ■ of ■

The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of ■ horse [or a business, or shares, or &c.] Fraud.

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.

The plaintiff's claim is for damages for breach of a contract of guarantee for A. B. Guarantee.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.



- Fire-insurance. The plaintiff's claim is for a loss under ■ policy of fire-insurance upon house and furniture. -  
 The plaintiff's claim is for damages for breach of a contract to insure ■ house.
- Landlord and tenant. The plaintiff's claim is for damages for breach of a contract to keep ■ house in repair.  
 The plaintiff's claim is for damages for breaches of covenants contained in ■ lease of a house.
- Medical man. The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.
- Mischievous animal. The plaintiff's claim is for damages for injury by the defendant's dog.
- Negligence. The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.  
 The plaintiff's claim is for damages for injury to the plaintiff while ■ passenger on the defendant's railway by the negligence of the defendant's servants.  
 The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.
- Act XIII of 1855. The plaintiff's claim is as executor of *A. B.*, deceased, for damages for the death of the said *A. B.*, from injuries received while ■ passenger on the defendant's railway, by the negligence of the defendant's servants.
- \* \* \* \* ■
- Sale of goods. The plaintiff's claim is for damages for breach of contract to accept and pay for goods.  
 The plaintiff's claim is for damages for non-delivery [*or short delivery, or defective quality, or other breach of contract of sale*] of cotton [*or &c*]
- Sale of land. The plaintiff's claim is for damages for breach of warranty of ■ horse.  
 The plaintiff's claim is for damages for breach of ■ contract to sell [*or purchase*] land.  
 The plaintiff's claim is for damages for breach of ■ contract to let [*or take*] a house.  
 The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] the lease, with good-will, fixtures, and stock-in-trade of ■ public house.  
 The plaintiff's claim is for damages for breach of covenant for title [*or for quiet enjoyment, or &c.*] in ■ conveyance of land.
- Trespass on land. The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or cutting his grass, or felling his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river*].
- \* ■ ■ ■ ■ \*



The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land.

*Discharge of  
water on land.*

The plaintiff's claim is for damages for breach of a contract to build ■ ship [or to repair ■ house, &c.] ■ Work.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build ■ ship, &c.

The plaintiff's claim is for damages to his house, trees, crops, &c.

## Appendix D.

### ORDER OF THE HIGH COURT RELATIVE TO THE HEARING OF SMALL CAUSE COURT REFERENCES.

*(See Act, Sec. 70.)*

It is ordered that the rules of the 5th of June 1850 as "to the transmission, and hearing, and return of cases sent from the Court of Small Causes to the Supreme Court for the opinion of the Judges of the latter Court" be, and the same are, hereby repealed. And in lieu thereof it is ordered that the following rules be passed, as the rules to be observed as to the transmission and hearing, and return of cases, sent from the Calcutta Court of Small Causes to the High Court for the opinion of the Judges of the latter Court, and, ■ to the fees to be charged in such cases, to take effect from the 12th day of April 1872.

1. The case shall be signed by a Judge of the Court of Small Causes, and shall be forwarded to the Registrar of the High Court on the Original Side.

2. The case shall be numbered, and the number of the case and the names of the parties shall be entered in a book to be kept for that purpose in the Registrar's office.

3. The Registrar, as soon as a case is received, shall obtain from the Chief Justice an appointment of a day for the hearing of the case, which shall not be sooner than four days from the day of its receipt, and he shall, as soon as he has obtained the appointment, notify the day fixed for the hearing of the case to the attorneys of the parties if they are represented by attorneys or to the Clerk of the Court of Small Causes for communication to the parties, if they are unrepresented by attorneys.

4. A bench consisting of not less than two Judges shall be appointed for the hearing of the case.

5. The order made in the case, together with a copy of the judgment, shall be transmitted by the Registrar to the Judges of the Court of Small Causes, the date and substance of the order being first entered in the Register book.

6. If counsel be employed, one counsel only shall be heard on each side, and a fee to one counsel only on each side will be allowed not exceeding sixty-eight rupees in cases within the limit of five hundred rupees, or eighty-five rupees in cases above the limit of five hundred rupees, unless, in cases of the latter class, the Court shall, on account of the difficulty or importance of any such case, think fit to sanction the employment of a second counsel, in which case a fee will be allowed to him not exceeding sixty-eight rupees. No consultation fee, or any fee other than that above-mentioned, shall be allowed in cases not exceeding five hundred rupees. This will also apply to cases exceeding five hundred rupees, unless otherwise ordered by the Court.

7. When an attorney is employed, he shall receive for all his work and labor in the matter, and in lieu of all fees, one fee of thirty-two rupees in cases not exceeding five hundred rupees, and of sixty-four rupees in cases exceeding five hundred rupees.

## Appendix E.

(See Act, Secs. 71-72.)

### *Rules regarding stamps used to denote fees chargeable in the Court of Small Causes of Calcutta, under section 27 of Act VII of 1870.*

[*Note.*—The word “Commission” used in these rules had reference to Act IX of 1850, ss. 19 and 20, and the Table of Fees. The word “Fees” only is used in Act XV of 1882. Whenever the word “Commission,” therefore, occurs in these rules read “Fees.”]

Stamp duties  
not to be  
charged on  
fractional parts  
of 8 annas.

1. No commission shall be charged on the fractional parts of annas,—i.e., if a suit be for rupees 10 and odd annas, being less than annas, commission will only be charged on rupees 10. If the amount claimed be for rupees 10-8 and upwards, but under rupees 11, then commission will be charged on rupees 10-8.

Mode of  
issuing stamps.

2. The necessary stamps shall be provided by the parties liable to pay the commission and fees, and shall, in respect of the institution of suits, be affixed to the plaint, in respect whereof such commission

and fees are payable. The costs and fees payable in respect of warrants, subpoenas, second summonses, and all other processes whatsoever, not being original summonses in reference to which it has not been customary to file as part of the record any written or printed document or paper whereon the stamp could be affixed, shall be paid ■ follows,—i. e., the party requiring such process to be issued shall produce an application in writing, and a stamp equal to the amount of costs and fees payable shall be affixed to such application. Such application shall be entitled in the cause or matter to which it relates, and shall specify shortly the object thereof, and shall be filed in the particular office of the Court to which it relates.

3. In order that the terms of ■ document may not be defaced or obscured, the stamp affixed to it shall be of ■ amount corresponding ■ nearly as practicable with the amount of the stamp which such document requires.

Number of stamps.

Rs.	As.	Rs.	As.	Rs.	As.
0	$\frac{1}{2}$	2	0	8	0
0	1	3	0	9	0
0	2	4	0	10	0
0	4	5	0	20	0
0	8	6	0	30	0
1	0	7	0	50	0

4. Stamps of the values noted in the margin will be required for the purposes of the Court. Such stamps shall be obtained by the Court Stamp Vendor from the Office of the Collector of Calcutta direct.

Stamps to be of the values specified.

5. No document required to have a stamp shall be received or filed in any proceedings in Court until the stamp has been cancelled or defaced. The cancellation shall be effected by punching out the figure head, so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

No document to be received until stamp cancelled.

6. Whenever a stamp is cancelled in the manner required by rule 5, the date of cancellation shall be marked upon it in writing or with a stamp to be provided for that purpose.

Date of cancellation to be stamped over cancelled stamp.

7. The treasurer of the Court for the time being shall be the stamp vendor, and the stamps shall be sold by him or his assistants in ■ office or offices situate within the premises of the Court and nowhere else. The stamp vendor's office shall be open daily for the sale of stamps (except on such days as the Court shall not be sitting), between the hours of 10 a. m. and 2-30 p. m.

Provision for sale of stamps.

8. A register shall be kept by the stamp vendor, in which shall be entered daily the number and denomination of stamps received from the Stamp Office, and the quantity sold; and the Collector shall furnish to the Court, at the close of each month, ■ memorandum, showing the number and value of stamps sold to the vendor on account of the Court during the month.

Registers to be kept.

9. A register shall also be kept in the office of the Clerk of the

Register of compromised

suits, &c., to be kept.

Certificates,

Court by an officer, to be styled the compromise register-writer, in which shall be entered the particulars of the cases compromised, and of cases in which costs have been remitted, either in whole or in part, by order of the Judges. It shall also be the duty of the compromise register-writer to make out the certificates for the payment of half and remitted costs. It shall be the duty of the Accountant to examine the certificates and compare them with the original records, and, if correct, to pass and initial the same for payment. The certificates, after being signed by the Clerk of the Court, shall be paid by the stamp vendor. The stamp vendor shall receive credit for the sum so paid in his account with the Collector of Stamps. A daily advice list of all orders for payment, supported by the orders themselves ■ vouchers, shall be sent to the Collector through the stamp vendor, but bearing the signature of the Clerk of the Court, and the Collector shall pass an order for payment on the list after checking it with the vouchers, and seeing that they have been so defaced that they cannot be used again.

The advice list bearing the Collector's order for payment and certificate to the effect that the vouchers noted therein have been duly examined by him, and after being checked and examined have been so defaced that they cannot be used again, shall be forwarded with the Collector's list of payments to the Accountant-General as ■ voucher.

Duties ■ to the examination of stamps.

10. It shall be the duty of the Superintendent or Head Officer of the Department in which applications are filed, with such aid ■ may be required, under the immediate superintendence of the Clerk of the Court, to receive all documents and see that the blank space in them is not unnecessarily covered with stamps and that stamps of the proper description and values are affixed, and to perform the duties required by rules 5 and 6. The Superintendent shall grant a receipt or memorandum for every application filed; and no money shall be paid out of the Court, unless on production of the said receipt or memorandum, or by order of a Judge.

11. In all cases of doubt as to the necessity of imposing a stamp, or the amount thereof, the Superintendent of the department in which the application is to be filed shall refer to the Clerk of the Court, and that officer shall determine all questions so referred to him, subject to the final decision of the First Judge, upon such questions as shall be referred to him under the provisions of section 5, Act VII of 1870.

12. These rules do not apply to fees payable to Counsel and Attorneys of the High Court in ■ certified, or to the costs of reference to the High Court.

Rules inapplicable to Counsel and Attorneys, and to costs of reference to High Court.

25th February, 1881.



## Appendix F.

TABLE OF FEES LEVIABLE IN SUITS INSTITUTED IN THE PRESIDENCY COURTS OF SMALL CAUSES UNDER SECTIONS 71 AND 72, ACT XV, 1882.

From 1 to 2,000 Rupees.

No fees are charged on the fractional parts of 8 annas, *i. e.*, if a suit be for Rs. 10 and odd annas, being less than 8 annas, fees are charged on Rs. 10. If the amount claimed be Rs. 10-8 and upwards, but under Rs. 11, fees are charged on Rs. 10-8.

Amount of Suit.	Institution Fees. Sec. 71.	Summons Fees. Sec. 72.	Total.	Amount of Suit.	Institution Fees. Sec. 71.	Summons Fees. Sec. 72.	Total.
	Rs. A.	Rs. A.	Rs. A.		Rs. A.	Rs. A.	Rs. A.
1	0 2	0 2	0 4	30	3 12	0 8	4 4
2	0 4	0 2	0 6	31	3 14	0 8	4 6
3	0 6	0 2	0 8	32	4 0	0 8	4 8
4	0 8	0 2	0 10	33	4 2	0 8	4 10
5	0 10	0 2	0 12	34	4 4	0 8	4 12
6	0 12	0 2	0 14	35	4 6	0 8	4 14
7	0 14	0 2	1 0	36	4 8	0 8	5 0
8	1 0	0 2	1 2	37	4 10	0 8	5 2
9	1 2	0 2	1 4	38	4 12	0 8	5 4
10	1 4	0 2	1 6	39	4 14	0 8	5 6
11	1 6	0 4	1 10	40	5 0	0 8	5 8
12	1 8	0 4	1 12	41	5 2	0 8	5 10
13	1 10	0 4	1 14	42	5 4	0 8	5 12
14	1 12	0 4	2 0	43	5 6	0 8	5 14
15	1 14	0 4	2 2	44	5 8	0 8	6 0
16	2 0	0 4	2 4	45	5 10	0 8	6 2
17	2 2	0 4	2 6	46	5 12	0 8	6 4
18	2 4	0 4	2 8	47	5 14	0 8	6 6
19	2 6	0 4	2 10	48	6 0	0 8	6 8
20	2 8	0 4	2 12	49	6 2	0 8	6 10
21	2 10	0 8	3 2	50	6 4	0 8	6 12
22	2 12	0 8	3 4	51	6 6	1 0	7 6
23	2 14	0 8	3 6	52	6 8	1 0	7 8
24	3 0	0 8	3 8	53	6 10	1 0	7 10
25	3 2	0 8	3 10	54	6 12	1 0	7 12
26	3 4	0 8	3 12	55	6 14	1 0	7 14
27	3 6	0 8	3 14	56	7 0	1 0	8 0
28	3 8	0 8	4 0	57	7 2	1 0	8 2
29	3 10	0 8	4 2	58	7 4	1 0	8 4



Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
59	7	6	1	0	8 6	104	13	0	1	4	14 ■
60	7	8	1	0	■ ■	105	13	2	1	4	14 ■
61	7	10	1	0	8 10	106	13	4	1	4	14 ■
62	7	12	1	0	8 12	107	13	6	1	4	14 10
63	7	14	1	0	8 14	108	13	8	1	4	14 12
64	8	0	1	0	9 0	109	13	10	1	4	14 14
65	■	2	1	0	9 2	110	13	12	1	4	15 ■
66	8	4	1	0	9 4	111	13	14	1	4	15 ■
67	■	6	1	0	9 6	112	14	0	1	4	15 ■
68	■	8	1	0	9 ■	113	14	2	1	4	15 ■
69	■	10	1	0	9 10	114	14	4	1	4	15 8
70	8	12	1	0	9 12	115	14	6	1	4	15 10
71	8	14	1	0	9 14	116	14	8	1	4	15 12
72	9	0	1	0	10 0	117	14	10	1	4	15 14
73	9	2	1	0	10 2	118	14	12	1	4	16 0
74	9	4	1	0	10 ■	119	14	14	1	4	16 2
75	9	6	1	0	10 6	120	15	0	1	4	16 4
76	9	8	1	0	10 ■	121	15	2	1	4	16 6
77	9	10	1	0	10 10	122	15	4	1	4	16 8
78	■	12	1	0	10 12	123	15	6	1	4	16 10
79	9	14	1	0	10 14	124	15	8	1	4	16 12
80	10	0	1	0	11 0	125	15	10	1	4	16 14
81	10	2	1	0	11 2	126	15	12	1	4	17 0
82	10	4	1	0	11 4	127	15	14	1	4	17 2
83	10	6	1	0	11 6	128	16	0	1	4	17 4
84	10	8	1	0	11 8	129	16	2	1	4	17 6
85	10	10	1	0	11 10	130	16	4	1	4	17 ■
86	10	12	1	0	11 12	131	16	6	1	4	17 10
87	10	14	1	0	11 14	132	16	8	1	4	17 12
88	11	0	1	0	12 0	133	16	10	1	4	17 14
89	11	2	1	0	12 2	134	16	12	1	4	18 0
90	11	4	1	0	12 ■	135	16	14	1	4	18 ■
91	11	6	1	0	12 6	136	17	0	1	■	18 4
92	11	8	1	0	12 ■	137	17	2	1	4	18 ■
93	11	10	1	0	12 10	138	17	4	1	4	18 ■
94	11	12	1	0	12 12	139	17	6	1	4	18 10
95	11	14	1	0	12 14	140	17	8	1	4	18 12
96	12	0	1	0	13 0	141	17	10	1	■	18 14
97	12	2	1	0	13 2	142	17	12	1	4	19 0
98	12	4	1	0	13 4	143	17	14	1	4	19 2
99	12	6	1	0	13 6	144	18	0	1	4	19 4
100	12	8	1	0	13 8	145	18	2	1	4	19 ■
101	12	10	1	4	13 14	146	18	4	1	4	19 ■
102	12	12	1	4	14 0	147	18	6	1	4	19 10
103	12	14	1	4	14 2	148	18	8	1	4	19 12

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.		Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	
	Rs.	A.	Rs.	A.	Rs.	A.		Rs.	A.	Rs.	A.	Rs.	A.
149	18	10	1	4	19	14	194	24	4	1	4	25	8
150	18	12	1	4	20	0	195	24	6	1	4	25	10
151	18	14	1	4	20	2	196	24	8	1	4	25	12
152	19	0	1	4	20	4	197	24	10	1	4	25	14
153	19	2	1	4	20	6	198	24	12	1	4	26	0
154	19	4	1	4	20	8	199	24	14	1	4	26	2
155	19	6	1	4	20	10	200	25	0	1	4	26	4
156	19	8	1	4	20	12	201	25	2	1	■	26	10
157	19	10	1	4	20	14	202	25	4	1	8	26	12
158	19	12	1	4	21	0	203	25	6	1	8	26	14
159	19	14	1	4	21	2	204	25	8	1	■	27	0
160	20	0	1	4	21	4	205	25	10	1	8	27	2
161	20	2	1	4	21	6	206	25	12	1	8	27	4
162	20	4	1	4	21	8	207	25	14	1	8	27	6
163	20	6	1	4	21	10	208	26	0	1	■	27	8
164	20	8	1	4	21	12	209	26	2	1	■	27	10
165	20	10	1	4	21	14	210	26	4	1	■	27	12
166	20	12	1	4	22	0	211	26	6	1	8	27	14
167	20	14	1	4	22	2	212	26	8	1	■	28	0
168	21	0	1	4	22	4	213	26	10	1	8	28	2
169	21	2	1	4	22	6	214	26	12	1	8	28	4
170	21	4	1	4	22	8	215	26	14	1	8	28	6
171	21	6	1	4	22	10	216	27	0	1	8	28	8
172	21	8	1	4	22	12	217	27	2	1	■	28	10
173	21	10	1	4	22	14	218	27	4	1	8	28	12
174	21	12	1	4	23	0	219	27	6	1	■	28	14
175	21	14	1	4	23	2	220	27	8	1	8	29	0
176	22	0	1	4	23	4	221	27	10	1	8	29	2
177	22	2	1	4	23	6	222	27	12	1	8	29	4
178	22	4	1	4	23	8	223	27	14	1	8	29	6
179	22	6	1	4	23	10	224	28	0	1	8	29	8
180	22	8	1	4	23	12	225	28	2	1	8	29	10
181	22	10	1	4	23	14	226	28	4	1	■	29	12
182	22	12	1	4	24	0	227	28	6	1	■	29	14
183	22	14	1	4	24	2	228	28	8	1	8	30	0
184	23	0	1	4	24	4	229	28	10	1	8	30	2
185	23	2	1	4	24	6	230	28	12	1	8	30	4
186	23	4	1	4	24	8	231	28	14	1	8	30	6
187	23	6	1	4	24	10	232	29	0	1	8	30	8
188	23	8	1	4	24	12	233	29	2	1	8	30	10
189	23	10	1	4	24	14	234	29	4	1	8	30	12
190	23	12	1	4	25	0	235	29	6	1	8	30	14
191	23	14	1	4	25	2	236	29	8	1	8	31	0
192	24	0	1	4	25	4	237	29	10	1	8	31	2
193	24	2	1	4	25	6	238	29	12	1	8	31	4

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.			Rs.	A.	Rs.	A.	
239	29	14	1	8	31 6	234	35	8	1	■	37 0
240	30	0	1	8	31 8	285	35	10	1	8	37 2
241	30	2	1	8	31 10	286	35	12	1	8	37 4
242	30	4	1	8	31 12	287	35	14	1	8	37 6
243	30	6	1	8	31 14	288	36	0	1	■	37 8
244	30	8	1	8	32 0	289	36	2	1	■	37 10
245	30	10	1	8	32 2	290	36	4	1	8	37 12
246	30	12	1	8	32 4	291	36	6	1	■	37 14
247	30	14	1	8	32 6	292	36	8	1	■	38 0
248	31	0	1	■	32 8	293	36	10	1	■	38 2
249	31	2	1	8	32 10	294	36	12	1	8	38 4
250	31	4	1	8	32 12	295	36	14	1	8	38 ■
251	31	6	1	8	32 14	296	37	0	1	■	38 ■
252	31	8	1	8	33 0	297	37	2	1	■	38 10
253	31	10	1	■	33 2	298	37	4	1	■	38 12
254	31	12	1	8	33 4	299	37	6	1	8	38 14
255	31	14	1	8	33 6	300	37	8	1	8	39 0
256	32	0	1	■	33 8	301	37	10	1	12	39 6
257	32	2	1	8	33 10	302	37	12	1	12	39 8
258	32	4	1	8	33 12	303	37	14	1	12	39 10
259	32	6	1	8	33 14	304	38	0	1	12	39 12
260	32	8	1	8	34 0	305	38	2	1	12	39 14
261	32	10	1	8	34 2	306	38	4	1	12	40 0
262	32	12	1	8	34 4	307	38	6	1	12	40 2
263	32	14	1	8	34 6	308	38	8	1	12	40 4
264	33	0	1	8	34 ■	309	38	10	1	12	40 6
265	33	2	1	8	34 10	310	38	12	1	12	40 8
266	33	4	1	8	34 12	311	38	14	1	12	40 10
267	33	6	1	8	34 14	312	39	0	1	12	40 12
268	33	8	1	8	35 0	313	39	2	1	12	40 14
269	33	10	1	8	35 2	314	39	4	1	12	41 0
270	33	12	1	8	35 4	315	39	6	1	12	41 2
271	33	14	1	8	35 6	316	39	8	1	12	41 4
272	34	0	1	8	35 8	317	39	10	1	12	41 6
273	34	2	1	8	35 10	318	39	12	1	12	41 ■
274	34	4	1	8	35 12	319	39	14	1	12	41 10
275	34	6	1	8	35 14	320	40	0	1	12	41 12
276	34	8	1	8	36 0	321	40	2	1	12	41 14
277	34	10	1	8	36 2	322	40	4	1	12	42 0
278	34	12	1	8	36 4	323	40	6	1	12	42 ■
279	34	14	1	8	36 6	324	40	8	1	12	42 4
280	35	0	1	8	36 8	325	40	10	1	12	42 ■
281	35	2	1	■	36 10	326	40	12	1	12	42 8
282	35	4	1	8	36 12	327	40	14	1	12	42 10
283	35	6	1	8	36 14	328	41	0	1	12	42 12

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.	Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.	Total.
	Rs.	A.	Rs. A.	Rs. A.		Rs.	A.	Rs. A.	Rs. A.
329	41	2	1 12	42 14	374	46	12	1 12	48 8
330	41	4	1 12	43 0	375	46	14	1 12	48 10
331	41	6	1 12	43 2	376	47	0	1 12	48 12
332	41	8	1 12	43 4	377	47	2	1 12	48 14
333	41	10	1 12	43 6	378	47	4	1 12	49 0
334	41	12	1 12	43 8	379	47	6	1 12	49 2
335	41	14	1 12	43 10	380	47	8	1 12	49 4
336	42	0	1 12	43 12	381	47	10	1 12	49 6
337	42	2	1 12	43 14	382	47	12	1 12	49 8
338	42	4	1 12	44 0	383	47	14	1 12	49 10
339	42	6	1 12	44 2	384	48	0	1 12	49 12
340	42	8	1 12	44 4	385	48	2	1 12	49 14
341	42	10	1 12	44 6	386	48	4	1 12	50 0
342	42	12	1 12	44 8	387	48	6	1 12	50 2
343	42	14	1 12	44 10	388	48	8	1 12	50 4
344	43	0	1 12	44 12	389	48	10	1 12	50 6
345	43	2	1 12	44 14	390	48	12	1 12	50 8
346	43	4	1 12	45 0	391	48	14	1 12	50 10
347	43	6	1 12	45 2	392	49	0	1 12	50 12
348	43	8	1 12	45 4	393	49	2	1 12	50 14
349	43	10	1 12	45 6	394	49	4	1 12	51 0
350	43	12	1 12	45 8	395	49	6	1 12	51 2
351	43	14	1 12	45 10	396	49	8	1 12	51 4
352	44	0	1 12	45 12	397	49	10	1 12	51 6
353	44	2	1 12	45 14	398	49	12	1 12	51 8
354	44	4	1 12	46 0	399	49	14	1 12	51 10
355	44	6	1 12	46 2	400	50	0	1 12	51 12
356	44	8	1 12	46 4	401	50	2	2 0	52 2
357	44	10	1 12	46 6	402	50	4	2 0	52 4
358	44	12	1 12	46 8	403	50	6	2 0	52 6
359	44	14	1 12	46 10	404	50	8	2 0	52 8
360	45	0	1 12	46 12	405	50	10	2 0	52 10
361	45	2	1 12	46 14	406	50	12	2 0	52 12
362	45	4	1 12	47 0	407	50	14	2 0	52 14
363	45	6	1 12	47 2	408	51	0	2 0	53 0
364	45	8	1 12	47 4	409	51	2	2 0	53 2
365	45	10	1 12	47 6	410	51	4	2 0	53 4
366	45	12	1 12	47 8	411	51	6	2 0	53 6
367	45	14	1 12	47 10	412	51	8	2 0	53 8
368	46	0	1 12	47 12	413	51	10	2 0	53 10
369	46	2	1 12	47 14	414	51	12	2 0	53 12
370	46	4	1 12	48 0	415	51	14	2 0	53 14
371	46	6	1 12	48 2	416	52	0	2 0	54 0
372	46	8	1 12	48 4	417	52	2	2 0	54 2
373	46	10	1 12	48 6	418	52	4	2 0	54 4

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
419	52	6	2	0	54 6	464	58	0	2	0	60 0
420	52	8	2	0	54 8	465	58	2	2	0	60 2
421	52	10	2	0	54 10	466	58	4	2	0	60 4
422	52	12	2	0	54 12	467	58	6	2	0	60 6
423	52	14	2	0	54 14	468	58	8	2	0	60 8
424	53	0	2	0	55 0	469	58	10	2	0	60 10
425	53	2	2	0	55 2	470	58	12	2	0	60 12
426	53	4	2	0	55 4	471	58	14	2	0	60 14
427	53	6	2	0	55 6	472	59	0	2	0	61 0
428	53	8	2	0	55 8	473	59	2	2	0	61 2
429	53	10	2	0	55 10	474	59	4	2	0	61 4
430	53	12	2	0	55 12	475	59	6	2	0	61 6
431	53	14	2	0	55 14	476	59	8	2	0	61 8
432	54	0	2	0	56 0	477	59	10	2	0	61 10
433	54	2	2	0	56 2	478	59	12	2	0	61 12
434	54	4	2	0	56 4	479	59	14	2	0	61 14
435	54	6	2	0	56 6	480	60	0	2	0	62 0
436	54	8	2	0	56 8	481	60	2	2	0	62 2
437	54	10	2	0	56 10	482	60	4	2	0	62 4
438	54	12	2	0	56 12	483	60	6	2	0	62 6
439	54	14	2	0	56 14	484	60	8	2	0	62 8
440	55	0	2	0	57 0	485	60	10	2	0	62 10
441	55	2	2	0	57 2	486	60	12	2	0	62 12
442	55	4	2	0	57 4	487	60	14	2	0	62 14
443	55	6	2	0	57 6	488	61	0	2	0	63 0
444	55	8	2	0	57 8	489	61	2	2	0	63 2
445	55	10	2	0	57 10	490	61	4	2	0	63 4
446	55	12	2	0	57 12	491	61	6	2	0	63 6
447	55	14	2	0	57 14	492	61	8	2	0	63 8
448	56	0	2	0	58 0	493	61	10	2	0	63 10
449	56	2	2	0	58 2	494	61	12	2	0	63 12
450	56	4	2	0	58 4	495	61	14	2	0	63 14
451	56	6	2	0	58 6	496	62	0	2	0	64 0
452	56	8	2	0	58 8	497	62	2	2	0	64 2
453	56	10	2	0	58 10	498	62	4	2	0	64 4
454	56	12	2	0	58 12	499	62	6	2	0	64 6
455	56	14	2	0	58 14	500	62	8	2	0	64 8
456	57	0	2	0	59 0	501	62	9	2	4	64 13
457	57	2	2	0	59 2	502	62	10	2	4	64 14
458	57	4	2	0	59 4	503	62	11	2	4	64 15
459	57	6	2	0	59 6	504	62	12	2	4	65 0
460	57	8	2	0	59 8	505	62	13	2	4	65 1
461	57	10	2	0	59 10	506	62	14	2	4	65 2
462	57	12	2	0	59 12	507	62	15	2	4	65 3
463	57	14	2	0	59 14	508	63	0	2	4	65 4



Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
509	63	1	2	4	65 5	554	65	14	2	4	68 2
510	63	2	2	4	65 6	555	65	15	2	4	68 3
511	63	3	2	4	65 7	556	66	0	2	4	68 4
512	63	4	2	4	65 8	557	66	1	2	4	68 5
513	63	5	2	4	65 9	558	66	2	2	4	68 6
514	63	6	2	4	65 10	559	66	3	2	4	68 7
515	63	7	2	4	65 11	560	66	4	2	4	68 8
516	63	8	2	4	65 12	561	66	5	2	4	68 ■
517	63	9	2	4	65 13	562	66	6	2	4	68 10
518	63	10	2	4	65 14	563	66	7	2	4	68 11
519	63	11	2	4	65 15	564	66	8	2	4	68 12
520	63	12	2	4	66 0	565	66	9	2	4	68 13
521	63	13	2	4	66 1	566	66	10	2	4	68 14
522	63	14	2	4	66 2	567	66	11	2	4	68 15
523	63	15	2	4	66 3	568	66	12	2	4	69 0
524	64	0	2	4	66 4	569	66	13	2	4	69 1
525	64	1	2	4	66 5	570	66	14	2	4	69 2
526	64	2	2	4	66 6	571	66	15	2	4	69 3
527	64	3	2	4	66 7	572	67	0	2	4	69 4
528	64	4	2	4	66 8	573	67	1	2	4	69 5
529	64	5	2	4	66 9	574	67	2	2	4	69 6
530	64	6	2	4	66 10	575	67	3	2	4	69 7
531	64	7	2	4	66 11	576	67	4	2	4	69 ■
532	64	8	2	4	66 12	577	67	5	2	4	69 ■
533	64	9	2	4	66 13	578	67	6	2	4	69 10
534	64	10	2	4	66 14	579	67	7	2	4	69 11
535	64	11	2	4	66 15	580	67	8	2	4	69 12
536	64	12	2	4	67 0	581	67	9	2	4	69 13
537	64	13	2	4	67 1	582	67	10	2	4	69 14
538	64	14	2	4	67 2	583	67	11	2	■	69 15
539	64	15	2	4	67 3	584	67	12	2	4	70 0
540	65	0	2	4	67 4	585	67	13	2	4	70 1
541	65	1	2	4	67 5	586	67	14	2	4	70 2
542	65	2	2	4	67 6	587	67	15	2	4	70 3
543	65	3	2	4	67 7	588	68	0	2	4	70 4
544	65	4	2	4	67 8	589	68	1	2	4	70 5
545	65	5	2	4	67 9	590	68	2	2	4	70 6
546	65	6	2	4	67 10	591	68	3	2	4	70 7
547	65	7	2	4	67 11	592	68	4	2	4	70 8
548	65	8	2	4	67 12	593	68	5	2	4	70 9
549	65	9	2	4	67 13	594	68	6	2	4	70 10
550	65	10	2	4	67 14	595	68	7	2	4	70 11
551	65	11	2	4	67 15	596	68	8	2	4	70 12
552	65	12	2	4	68 0	597	68	9	2	4	70 13
553	65	13	2	4	68 1	598	68	10	2	4	70 14

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
599	68	11	2	4	70 15	644	71	8	2	■	74 0
600	68	12	2	4	71 0	645	71	9	2	■	74 1
601	68	13	2	8	71 5	646	71	10	2	8	74 2
602	68	14	2	8	71 6	647	71	11	2	8	74 3
603	68	15	2	8	71 7	648	71	12	2	8	74 4
604	69	0	2	8	71 8	649	71	13	2	8	74 5
605	69	1	2	8	71 9	650	71	14	2	8	74 6
606	69	2	2	8	71 10	651	71	15	2	■	74 7
607	69	3	2	8	71 11	652	72	0	2	■	74 ■
608	69	4	2	8	71 12	653	72	1	2	■	74 ■
609	69	5	2	8	71 13	654	72	2	2	8	74 10
610	69	6	2	8	71 14	655	72	3	2	8	74 11
611	69	7	2	8	71 15	656	72	4	2	■	74 12
612	69	8	2	8	72 0	657	72	5	2	8	74 13
613	69	9	2	■	72 1	658	72	6	2	■	74 14
614	69	10	2	8	72 2	659	72	7	2	8	74 15
615	69	11	2	8	72 3	660	72	8	2	8	75 0
616	69	12	2	8	72 4	661	72	9	2	8	75 1
617	69	13	2	8	72 5	662	72	10	2	8	75 2
618	69	14	2	8	72 6	663	72	11	2	■	75 ■
619	69	15	2	8	72 7	664	72	12	2	■	75 4
620	70	0	2	8	72 8	665	72	13	2	8	75 5
621	70	1	2	8	72 9	666	72	14	2	8	75 6
622	70	2	2	8	72 10	667	72	15	2	8	75 7
623	70	3	2	8	72 11	668	73	0	2	■	75 8
624	70	4	2	8	72 12	669	73	1	2	■	75 9
625	70	5	2	8	72 13	670	73	2	2	8	75 10
626	70	6	2	8	72 14	671	73	3	2	8	75 11
627	70	7	2	8	72 15	672	73	4	2	8	75 12
628	70	8	2	8	73 0	673	73	5	2	8	75 13
629	70	9	2	8	73 1	674	73	6	2	8	75 14
630	70	10	2	8	73 2	675	73	7	2	8	75 15
631	70	11	2	8	73 3	676	73	8	2	■	76 ■
632	70	12	2	8	73 4	677	73	9	2	■	76 1
633	70	13	2	■	73 5	678	73	10	2	■	76 2
634	70	14	2	8	73 ■	679	73	11	2	8	76 ■
635	70	15	2	8	73 7	680	73	12	2	8	76 4
636	71	0	2	8	73 ■	681	73	13	2	8	76 5
637	71	1	2	8	73 ■	682	73	14	2	8	76 6
638	71	2	2	■	73 10	683	73	15	2	8	76 7
639	71	3	2	8	73 11	684	74	0	2	8	76 ■
640	71	4	2	8	73 12	685	74	1	2	8	76 ■
641	71	5	2	8	73 13	686	74	2	2	■	76 10
642	71	6	2	8	73 14	687	74	3	2	8	76 11
643	71	7	2	8	73 15	688	74	4	2	■	76 12

Amount of Suit.	Institution Fees. Sec. 71.	Sum- mons Fees. Sec. 72.	Total.	Amount of Suit.	Institution Fees. Sec. 71.	Sum- mons Fees. Sec. 72.	Total.
Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.
689	74 5	2 8	76 13	734	77 2	2 12	79 14
690	74 6	2 ■	76 14	735	77 3	2 12	79 15
691	74 7	2 8	76 15	736	77 4	2 12	80 0
692	74 8	2 8	77 0	737	77 5	2 12	80 ■
693	74 9	2 ■	77 1	738	77 6	2 12	80 2
694	74 10	2 ■	77 2	739	77 7	2 12	80 3
695	74 11	2 8	77 3	740	77 8	2 12	80 4
696	74 12	2 ■	77 4	741	77 9	2 12	80 5
697	74 13	2 ■	77 5	742	77 10	2 12	80 ■
698	74 14	2 ■	77 6	743	77 11	2 12	80 7
699	74 15	2 ■	77 7	744	77 12	2 12	80 ■
700	75 0	2 8	77 ■	745	77 13	2 12	80 ■
701	75 1	2 12	77 13	746	77 14	2 12	80 10
702	75 2	2 12	77 14	747	77 15	2 12	80 11
703	75 3	2 12	77 15	748	78 0	2 12	80 12
704	75 4	2 12	78 0	749	78 1	2 12	80 13
705	75 5	2 12	78 ■	750	78 2	2 12	80 14
706	75 6	2 12	78 2	751	78 3	2 12	80 15
707	75 7	2 12	78 3	752	78 4	2 12	81 0
708	75 8	2 12	78 4	753	78 5	2 12	81 1
709	75 9	2 12	78 5	754	78 6	2 12	81 2
710	75 10	2 12	78 6	755	78 7	2 12	81 3
711	75 11	2 12	78 7	756	78 8	2 12	81 4
712	75 12	2 12	78 8	757	78 ■	2 12	81 5
713	75 13	2 12	78 9	758	78 10	2 12	81 6
714	75 14	2 12	78 10	759	78 11	2 12	81 7
715	75 15	2 12	78 11	760	78 12	2 12	81 ■
716	76 ■	2 12	78 12	761	78 13	■ 12	81 ■
717	76 1	2 12	78 13	762	78 14	■ 12	81 10
718	76 2	2 12	78 14	763	78 15	2 12	81 11
719	76 ■	2 12	78 15	764	79 0	2 12	81 12
720	76 4	2 12	79 0	765	79 1	2 12	81 13
721	76 5	2 12	79 1	766	79 2	2 12	81 14
722	76 6	2 12	79 2	767	79 3	2 12	81 15
723	76 7	2 12	79 ■	768	79 4	2 12	82 0
724	76 8	2 12	79 4	769	79 5	2 12	82 ■
725	76 9	2 12	79 5	770	79 6	2 12	82 2
726	76 10	2 12	79 6	771	79 7	2 12	82 3
727	76 11	2 12	79 7	772	79 8	2 12	82 4
728	76 12	2 12	79 8	773	79 9	2 12	82 5
729	76 13	2 12	79 9	774	79 10	2 12	82 ■
730	76 14	2 12	79 10	775	79 11	2 12	82 7
731	76 15	2 12	79 11	776	79 12	2 12	82 8
732	77 0	2 12	79 12	777	79 13	2 12	82 9
733	77 1	2 12	79 13	778	79 14	2 12	82 10

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons. Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
779	79	15	2	12	82 11	824	82	12	3	0	85 12
780	80	0	2	12	82 12	825	82	13	3	0	85 13
781	80	1	2	12	82 13	826	82	14	3	0	85 14
782	80	2	2	12	82 14	827	82	15	3	0	85 15
783	80	3	2	12	82 15	828	83	0	3	0	86 0
784	80	4	2	12	83 0	829	83	1	3	0	86 1
785	80	5	2	12	83 1	830	83	2	3	0	86 2
786	80	6	2	12	83 2	831	83	3	3	0	86 3
787	80	7	2	12	83 3	832	83	4	3	0	86 4
788	80	8	2	12	83 4	833	83	5	3	0	86 5
789	80	9	2	12	83 5	834	83	6	3	0	86 6
790	80	10	2	12	83 ■	835	83	7	3	0	86 7
791	80	11	2	12	83 7	836	83	8	3	0	86 8
792	80	12	2	12	83 ■	837	83	9	3	0	86 ■
793	80	13	2	12	83 9	838	83	10	3	0	86 10
794	80	14	2	12	83 10	839	83	11	3	0	86 11
795	80	15	2	12	83 11	840	83	12	3	0	86 12
796	81	0	2	12	83 12	841	83	13	3	0	86 13
797	81	1	2	12	83 13	842	83	14	3	0	86 14
798	81	2	2	12	83 14	843	83	15	3	0	86 15
799	81	3	2	12	83 15	844	84	0	3	0	87 0
800	81	4	2	12	84 0	845	84	1	3	0	87 1
801	81	5	3	0	84 5	846	84	2	3	0	87 2
802	81	6	3	0	84 6	847	84	3	3	0	87 3
803	81	7	3	0	84 7	848	84	4	3	0	87 4
804	81	8	3	0	84 8	849	84	5	3	0	87 5
805	81	9	3	0	84 9	850	84	6	3	0	87 6
806	81	10	3	0	84 10	851	84	7	3	0	87 7
807	81	11	3	0	84 11	852	84	8	3	0	87 ■
808	81	12	3	0	84 12	853	84	9	3	0	87 ■
809	81	13	3	0	84 13	854	84	10	3	0	87 10
810	81	14	3	0	84 14	855	84	11	3	0	87 11
811	81	15	3	0	84 15	856	84	12	3	0	87 12
812	82	0	3	0	85 0	857	84	13	3	0	87 13
813	82	1	3	0	85 1	858	84	14	3	0	87 14
814	82	2	3	0	85 2	859	84	15	3	0	87 15
815	82	3	3	0	85 3	860	85	0	3	0	88 0
816	82	4	3	0	85 4	861	85	1	3	0	88 1
817	82	5	3	0	85 5	862	85	2	3	0	88 2
818	82	6	3	0	85 6	863	85	3	3	0	88 3
819	82	7	3	0	85 7	864	85	4	3	0	88 4
820	82	8	3	0	85 8	865	85	5	3	0	88 5
821	82	9	3	0	85 9	866	85	6	3	0	88 6
822	82	10	3	0	85 10	867	85	7	3	0	88 7
823	82	11	3	0	85 11	868	85	8	3	0	88 ■

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
869	85	9	3	0	88 9	914	88	6	3	4	91 10
870	85	10	3	0	88 10	915	88	7	3	4	91 11
871	85	11	3	0	88 11	916	88	8	3	4	91 12
872	85	12	3	0	88 12	917	88	9	3	4	91 13
873	85	13	3	0	88 13	918	88	10	3	4	91 14
874	85	14	3	0	88 14	919	88	11	3	4	91 15
875	85	15	3	0	88 15	920	88	12	3	4	92 0
876	86	0	3	0	89 0	921	88	13	3	4	92 1
877	86	1	3	0	89 1	922	88	14	3	4	92 2
878	86	2	3	0	89 2	923	88	15	3	4	92 3
879	86	3	3	0	89 3	924	89	0	3	4	92 4
880	86	4	3	0	89 4	925	89	1	3	4	92 5
881	86	5	3	0	89 5	926	89	2	3	4	92 6
882	86	6	3	0	89 6	927	89	3	3	4	92 7
883	86	7	3	0	89 7	928	89	4	3	4	92 ■
884	86	8	3	0	89 8	929	89	5	3	4	92 ■
885	86	9	3	0	89 9	930	89	6	3	4	92 10
886	86	10	3	0	89 10	931	89	7	3	4	92 11
887	86	11	3	0	89 11	932	89	8	3	4	92 12
888	86	12	3	0	89 12	933	89	9	3	4	92 13
889	86	13	3	0	89 13	934	89	10	3	4	92 14
890	86	14	3	0	89 14	935	89	11	3	4	92 15
891	86	15	3	0	89 15	936	89	12	3	4	93 0
892	87	0	3	0	90 0	937	89	13	3	4	93 ■
893	87	1	3	0	90 1	938	89	14	3	4	93 2
894	87	2	3	0	90 2	939	89	15	3	4	93 3
895	87	3	3	0	90 3	940	90	0	3	4	93 4
896	87	4	3	0	90 4	941	90	1	3	4	93 5
897	87	5	3	0	90 5	942	90	2	3	4	93 6
898	87	6	3	0	90 6	943	90	3	3	4	93 7
899	87	7	3	0	90 7	944	90	4	3	4	93 8
900	87	8	3	0	90 8	945	90	5	3	4	93 9
901	87	9	3	4	90 13	946	90	6	3	4	93 10
902	87	10	3	4	90 14	947	90	7	3	4	93 11
903	87	11	3	4	90 15	948	90	8	3	4	93 12
904	87	12	3	4	91 0	949	90	9	3	4	93 13
905	87	13	3	4	91 1	950	90	10	3	4	93 14
906	87	14	3	4	91 2	951	90	11	3	4	93 15
907	87	15	3	4	91 3	952	90	12	3	4	94 0
908	88	0	3	4	91 4	953	90	13	3	4	94 1
909	88	1	3	4	91 5	954	90	14	3	4	94 2
910	88	2	3	4	91 6	955	90	15	3	4	94 3
911	88	3	3	4	91 7	956	91	0	3	4	94 4
912	88	4	3	4	91 ■	957	91	1	3	4	94 5
913	88	5	3	4	91 9	958	91	2	3	4	94 6



Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
959	91	3	3	4	94 7	1004	94	0	3	6	97 6
960	91	4	3	4	94 ■	1005	94	1	3	6	97 7
961	91	5	3	4	94 9	1006	94	2	3	6	97 8
962	91	6	3	4	94 10	1007	94	3	3	6	97 9
963	91	7	3	4	94 11	1008	94	4	3	6	97 10
964	91	8	3	4	94 12	1009	94	5	3	■	97 11
965	91	9	3	4	94 13	1010	94	6	3	6	97 12
966	91	10	3	4	94 14	1011	94	7	3	■	97 13
967	91	11	3	4	94 15	1012	94	8	3	■	97 14
968	91	12	3	4	95 0	1013	94	9	3	6	97 15
969	91	13	3	4	95 1	1014	94	10	3	6	98 0
970	91	14	3	4	95 2	1015	94	11	3	6	98 1
971	91	15	3	4	95 3	1016	94	12	3	6	98 2
972	92	0	3	4	95 4	1017	94	13	3	6	98 3
973	92	1	3	4	95 5	1018	94	14	3	6	98 4
974	92	2	3	4	95 6	1019	94	15	3	6	98 ■
975	92	3	3	4	95 7	1020	95	0	3	6	98 6
976	92	4	3	4	95 8	1021	95	1	3	6	98 7
977	92	5	3	4	95 9	1022	95	2	3	6	98 8
978	92	6	3	4	95 10	1023	95	3	3	6	98 ■
979	92	7	3	4	95 11	1024	95	4	3	6	98 10
980	92	8	3	4	95 12	1025	95	5	3	6	98 11
981	92	9	3	4	95 13	1026	95	6	3	6	98 12
982	92	10	3	4	95 14	1027	95	7	3	■	98 13
983	92	11	3	4	95 15	1028	95	8	3	6	98 14
984	92	12	3	4	96 0	1029	95	9	3	■	98 15
985	92	13	3	4	96 1	1030	95	10	3	6	99 0
986	92	14	3	4	96 2	1031	95	11	3	6	99 1
987	92	15	3	4	96 ■	1032	95	12	3	■	99 2
988	93	0	3	4	96 4	1033	95	13	3	6	99 ■
989	93	1	3	4	96 5	1034	95	14	3	6	99 4
990	93	2	3	4	96 6	1035	95	15	3	6	99 5
991	93	3	3	4	96 7	1036	96	0	3	■	99 6
992	93	4	3	4	96 8	1037	96	1	3	6	99 7
993	93	5	3	4	96 9	1038	96	2	3	6	99 ■
994	93	6	3	4	96 10	1039	96	3	3	6	99 ■
995	93	7	3	4	96 11	1040	96	4	3	6	99 10
996	93	8	■	4	96 12	1041	96	5	3	6	99 11
997	93	9	3	4	96 13	1042	96	6	3	6	99 12
998	93	10	3	4	96 14	1043	96	7	3	6	99 13
999	93	11	3	4	96 15	1044	96	8	3	6	99 14
1000	93	12	3	4	97 0	1045	96	9	3	■	99 15
1001	93	13	3	6	97 3	1046	96	10	3	6	100 0
1002	93	14	3	6	97 4	1047	96	11	3	6	100 1
1003	93	15	3	6	97 5	1048	96	12	3	■	100 2

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons. Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
1049	96	13	3	6	100 3	1094	99	10	3	6	103 0
1050	96	14	3	6	100 4	1095	99	11	3	6	103 1
1051	96	15	3	6	100 5	1096	99	12	3	6	103 2
1052	97	0	3	6	100 6	1097	99	13	3	6	103 3
1053	97	1	3	6	100 7	1098	99	14	3	6	103 4
1054	97	2	3	6	100 8	1099	99	15	3	6	103 5
1055	97	3	3	6	100 9	1100	100	0	3	6	103 ■
1056	97	4	3	6	100 10	1101	100	1	3	8	103 9
1057	97	5	3	6	100 11	1102	100	2	3	8	103 10
1058	97	6	3	6	100 12	1103	100	3	3	8	103 11
1059	97	7	3	6	100 13	1104	100	4	3	8	103 12
1060	97	8	3	6	100 14	1105	100	5	3	8	103 13
1061	97	9	3	6	100 15	1106	100	6	3	8	103 14
1062	97	10	3	6	101 0	1107	100	7	3	■	103 15
1063	97	11	3	6	101 1	1108	100	8	3	8	104 0
1064	97	12	3	6	101 2	1109	100	9	3	8	104 1
1065	97	13	3	6	101 3	1110	100	10	3	8	104 2
1066	97	14	3	6	101 4	1111	100	11	3	■	104 3
1067	97	15	3	6	101 5	1112	100	12	3	8	104 4
1068	98	0	3	6	101 6	1113	100	13	3	8	104 5
1069	98	1	3	6	101 7	1114	100	14	3	■	104 6
1070	98	2	3	6	101 8	1115	100	15	3	8	104 7
1071	98	3	3	6	101 9	1116	101	0	3	8	104 ■
1072	98	4	3	6	101 10	1117	101	1	3	8	104 9
1073	98	5	3	6	101 11	1118	101	2	3	8	104 10
1074	98	6	3	6	101 12	1119	101	3	3	8	104 11
1075	98	7	3	6	101 13	1120	101	4	3	■	104 12
1076	98	8	3	6	101 14	1121	101	5	3	8	104 13
1077	98	9	3	6	101 15	1122	101	6	3	8	104 14
1078	98	10	3	6	102 0	1123	101	7	3	■	104 15
1079	98	11	3	6	102 1	1124	101	8	3	8	105 0
1080	98	12	3	6	102 2	1125	101	9	3	8	105 ■
1081	98	13	3	6	102 3	1126	101	10	3	■	105 ■
1082	98	14	3	6	102 4	1127	101	11	3	8	105 ■
1083	98	15	3	6	102 5	1128	101	12	3	8	105 4
1084	99	0	3	6	102 6	1129	101	13	3	8	105 5
1085	99	1	3	6	102 7	1130	101	14	3	8	105 6
1086	99	2	3	6	102 8	1131	101	15	3	■	105 7
1087	99	3	3	6	102 9	1132	102	0	3	■	105 8
1088	99	4	3	6	102 10	1133	102	1	3	8	105 9
1089	99	5	3	6	102 11	1134	102	2	3	8	105 10
1090	99	6	3	6	102 12	1135	102	3	3	8	105 11
1091	99	7	3	6	102 13	1136	102	4	3	8	105 12
1092	99	8	3	6	102 14	1137	102	5	3	8	105 13
1093	99	9	3	6	102 15	1138	102	6	3	8	105 14

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.		Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	
	Rs.	A.	Rs.	A.	Rs.	A.		Rs.	A.	Rs.	A.	Rs.	A.
1139	102	7	3	8	105	15	1184	105	4	3	■	108	12
1140	102	8	3	8	106	0	1185	105	5	3	8	108	13
1141	102	9	3	8	106	■	1186	105	6	3	■	108	14
1142	102	10	3	8	106	2	1187	105	7	3	8	108	15
1143	102	11	3	8	106	3	1188	105	8	3	8	109	0
1144	102	12	3	8	106	4	1189	105	9	3	8	109	1
1145	102	13	3	8	106	5	1190	105	10	3	8	109	2
1146	102	14	3	8	106	6	1191	105	11	3	8	109	■
1147	102	15	3	8	106	7	1192	105	12	3	8	109	4
1148	103	0	3	8	106	■	1193	105	13	3	8	109	5
1149	103	1	3	8	106	9	1194	105	14	3	8	109	6
1150	103	2	3	8	106	10	1195	105	15	3	8	109	7
1151	103	3	3	8	106	11	1196	106	0	3	8	109	8
1152	103	4	3	8	106	12	1197	106	1	3	8	109	9
1153	103	5	3	8	106	13	1198	106	2	3	■	109	10
1154	103	6	3	8	106	14	1199	106	3	3	■	109	11
1155	103	7	3	■	106	15	1200	106	4	3	■	109	12
1156	103	8	3	8	107	0	1201	106	5	3	10	109	15
1157	103	9	3	8	107	1	1202	106	6	3	10	110	0
1158	103	10	3	8	107	2	1203	106	7	3	10	110	■
1159	103	11	3	8	107	3	1204	106	8	3	10	110	■
1160	103	12	3	8	107	4	1205	106	9	3	10	110	■
1161	103	13	3	8	107	5	1206	106	10	3	10	110	4
1162	103	14	3	8	107	6	1207	106	11	3	10	110	5
1163	103	15	3	8	107	7	1208	106	12	3	10	110	6
1164	104	0	3	8	107	8	1209	106	13	3	10	110	7
1165	104	1	3	8	107	9	1210	106	14	3	10	110	8
1166	104	2	3	8	107	10	1211	106	15	3	10	110	9
1167	104	3	3	8	107	11	1212	107	0	3	10	110	10
1168	104	4	3	8	107	12	1213	107	1	3	10	110	11
1169	104	5	3	8	107	13	1214	107	2	3	10	110	12
1170	104	6	3	8	107	14	1215	107	3	■	10	110	13
1171	104	7	3	8	107	15	1216	107	4	3	10	110	14
1172	104	■	3	8	108	0	1217	107	5	3	10	110	15
1173	104	9	3	8	108	1	1218	107	6	3	10	111	■
1174	104	10	3	8	108	2	1219	107	7	3	10	111	1
1175	104	11	3	8	108	3	1220	107	8	3	10	111	2
1176	104	12	3	8	108	4	1221	107	9	3	10	111	3
1177	104	13	3	8	108	5	1222	107	10	3	10	111	4
1178	104	14	3	8	108	6	1223	107	11	3	10	111	5
1179	104	15	3	8	108	7	1224	107	12	3	10	111	6
1180	105	0	3	8	108	8	1225	107	13	3	10	111	7
1181	105	1	3	8	108	9	1226	107	14	3	10	111	8
1182	105	2	3	8	108	10	1227	107	15	3	10	111	■
1183	105	3	3	8	108	11	1228	108	0	3	10	111	10

Amount of Suit.	Institution Fees. Sec. 71.	Sum- mons Fees. Sec. 72.	Total.	Amount of Suit.	Institution Fees. Sec. 71.	Sum- mons Fees. Sec. 72.	Total.
	Rs. A.	Rs. A.	Rs. A.		Rs. A.	Rs. A.	Rs. A.
1229	108	1	3 10	111	11		
1230	108	2	3 10	111	12		
1231	108	3	3 10	111	13		
1232	108	4	3 10	111	14		
1233	108	5	3 10	111	15		
1234	108	6	3 10	112	0		
1235	108	7	3 10	112	1		
1236	108	8	3 10	112	2		
1237	108	9	3 10	112	3		
1238	108	10	3 10	112	4		
1239	108	11	3 10	112	5		
1240	108	12	3 10	112	6		
1241	108	13	3 10	112	7		
1242	108	14	3 10	112	8		
1243	108	15	3 10	112	9		
1244	109	0	3 10	112	10		
1245	109	1	3 10	112	11		
1246	109	2	3 10	112	12		
1247	109	■	3 10	112	13		
1248	109	4	3 10	112	14		
1249	109	5	3 10	112	15		
1250	109	6	3 10	113	0		
1251	109	7	3 10	113	1		
1252	109	8	3 10	113	2		
1253	109	9	3 10	113	3		
1254	109	10	3 10	113	4		
1255	109	11	3 10	113	5		
1256	109	12	3 10	113	6		
1257	109	13	3 10	113	7		
1258	109	14	3 10	113	8		
1259	109	15	3 10	113	9		
1260	110	0	3 10	113	10		
1261	110	1	3 10	113	11		
1262	110	2	■ 10	113	12		
1263	110	3	3 10	113	13		
1264	110	4	3 10	113	14		
1265	110	5	3 10	113	15		
1266	110	6	3 10	114	0		
1267	110	7	3 10	114	1		
1268	110	8	3 10	114	2		
1269	110	9	3 10	114	3		
1270	110	10	3 10	114	4		
1271	110	11	3 10	114	5		
1272	110	12	3 10	114	6		
1273	110	13	3 10	114	7		
				1274	110	14	3 10
				1275	110	15	3 10
				1276	111	0	3 10
				1277	111	1	3 10
				1278	111	2	3 10
				1279	111	3	3 10
				1280	111	4	3 10
				1281	111	5	3 10
				1282	111	6	3 10
				1283	111	7	3 10
				1284	111	8	3 10
				1285	111	9	3 10
				1286	111	10	3 10
				1287	111	11	3 10
				1288	111	12	3 10
				1289	111	13	3 10
				1290	111	14	3 10
				1291	111	15	3 10
				1292	112	0	3 10
				1293	112	1	3 10
				1294	112	2	3 10
				1295	112	3	3 10
				1296	112	4	3 10
				1297	112	5	3 10
				1298	112	6	3 10
				1299	112	7	3 10
				1300	112	8	3 10
				1301	112	9	3 12
				1302	112	10	3 12
				1303	112	11	3 12
				1304	112	12	3 12
				1305	112	13	3 12
				1306	112	14	3 12
				1307	112	15	3 12
				1308	113	0	3 12
				1309	113	1	3 12
				1310	113	2	3 12
				1311	113	3	3 12
				1312	113	4	3 12
				1313	113	5	3 12
				1314	113	6	3 12
				1315	113	7	3 12
				1316	113	8	3 12
				1317	113	9	3 12
				1318	113	10	3 12

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.			Rs.	A.	Rs.	A.	
1319	113	11	3	12	117 7	1364	116	8	3	12	120 4
1320	113	12	3	12	117 8	1365	116	9	3	12	120 5
1321	113	13	3	12	117 9	1366	116	10	3	12	120 6
1322	113	14	3	12	117 10	1367	116	11	3	12	120 7
1323	113	15	3	12	117 11	1368	116	12	3	12	120 8
1324	114	0	3	12	117 12	1369	116	13	3	12	120 9
1325	114	1	3	12	117 13	1370	116	14	3	12	120 10
1326	114	2	3	12	117 14	1371	116	15	3	12	120 11
1327	114	3	3	12	117 15	1372	117	0	3	12	120 12
1328	114	4	3	12	118 0	1373	117	1	3	12	120 13
1329	114	5	3	12	118 1	1374	117	2	3	12	120 14
1330	114	6	3	12	118 2	1375	117	3	3	12	120 15
1331	114	7	3	12	118 3	1376	117	4	3	12	121 0
1332	114	8	3	12	118 4	1377	117	5	3	12	121 1
1333	114	9	3	12	118 5	1378	117	6	3	12	121 2
1334	114	10	3	12	118 6	1379	117	7	3	12	121 3
1335	114	11	3	12	118 7	1380	117	8	3	12	121 4
1336	114	12	3	12	118 8	1381	117	9	3	12	121 5
1337	114	13	3	12	118 9	1382	117	10	3	12	121 6
1338	114	14	3	12	118 10	1383	117	11	3	12	121 7
1339	114	15	3	12	118 11	1384	117	12	3	12	121 8
1340	115	0	3	12	118 12	1385	117	13	3	12	121 9
1341	115	1	3	12	118 13	1386	117	14	3	12	121 10
1342	115	2	3	12	118 14	1387	117	15	3	12	121 11
1343	115	3	3	12	118 15	1388	118	0	3	12	121 12
1344	115	4	3	12	119 0	1389	118	1	3	12	121 13
1345	115	5	3	12	119 1	1390	118	2	3	12	121 14
1346	115	6	3	12	119 2	1391	118	3	3	12	121 15
1347	115	7	3	12	119 3	1392	118	4	3	12	122 0
1348	115	8	3	12	119 4	1393	118	5	3	12	122 1
1349	115	9	3	12	119 5	1394	118	6	3	12	122 2
1350	115	10	3	12	119 6	1395	118	7	3	12	122 3
1351	115	11	3	12	119 7	1396	118	8	3	12	122 4
1352	115	12	3	12	119 8	1397	118	9	3	12	122 5
1353	115	13	3	12	119 9	1398	118	10	3	12	122 6
1354	115	14	3	12	119 10	1399	118	11	3	12	122 7
1355	115	15	3	12	119 11	1400	118	12	3	12	122 8
1356	116	0	3	12	119 12	1401	118	13	3	14	122 9
1357	116	1	3	12	119 13	1402	118	14	3	14	122 10
1358	116	2	3	12	119 14	1403	118	15	3	14	122 11
1359	116	3	3	12	119 15	1404	119	0	3	14	122 12
1360	116	4	3	12	120 0	1405	119	1	3	14	122 13
1361	116	5	3	12	120 1	1406	119	2	3	14	122 14
1362	116	6	3	12	120 2	1407	119	3	3	14	123 0
1363	116	7	3	12	120 3	1408	119	4	3	14	123 1



Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.	Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.	Total.
	Rs.	A.	Rs. A.	Rs. A.		Rs.	A.	Rs. A.	Rs. A.
1409	119	5	■ 14	123 3	1454	122	2	3 14	126 0
1410	119	6	3 14	123 4	1455	122	3	3 14	126 1
1411	119	7	3 14	123 5	1456	122	4	3 14	126 2
1412	119	■	3 14	123 6	1457	122	5	3 14	126 3
1413	119	9	3 14	123 7	1458	122	6	3 14	126 4
1414	119	10	3 14	123 8	1459	122	7	3 14	126 5
1415	119	11	■ 14	123 9	1460	122	8	3 14	126 6
1416	119	12	3 14	123 10	1461	122	9	3 14	126 7
1417	119	13	3 14	123 11	1462	122	10	3 14	126 8
1418	119	14	3 14	123 12	1463	122	11	3 14	126 9
1419	119	15	3 14	123 13	1464	122	12	3 14	126 10
1420	120	0	3 14	123 14	1465	122	13	3 14	126 11
1421	120	1	3 14	123 15	1466	122	14	3 14	126 12
1422	120	2	3 14	124 0	1467	122	15	3 14	126 13
1423	120	3	3 14	124 1	1468	123	0	3 14	126 14
1424	120	4	3 14	124 2	1469	123	1	3 14	126 15
1425	120	5	3 14	124 3	1470	123	2	3 14	127 0
1426	120	6	3 14	124 4	1471	123	3	3 14	127 1
1427	120	7	3 14	124 5	1472	123	4	3 14	127 ■
1428	120	■	3 14	124 6	1473	123	5	3 14	127 3
1429	120	9	3 14	124 7	1474	123	6	3 14	127 4
1430	120	10	3 14	124 8	1475	123	7	3 14	127 5
1431	120	11	3 14	124 9	1476	123	■	3 14	127 6
1432	120	12	3 14	124 10	1477	123	9	3 14	127 7
1433	120	13	3 14	124 11	1478	123	10	3 14	127 8
1434	120	14	3 14	124 12	1479	123	11	3 14	127 9
1435	120	15	3 14	124 13	1480	123	12	3 14	127 10
1436	121	■	3 14	124 14	1481	123	13	3 14	127 11
1437	121	1	3 14	124 15	1482	123	14	3 14	127 12
1438	121	2	3 14	125 0	1483	123	15	3 14	127 13
1439	121	■	3 14	125 1	1484	124	0	3 14	127 14
1440	121	4	3 14	125 2	1485	124	1	3 14	127 15
1441	121	5	3 14	125 3	1486	124	2	3 14	128 0
1442	121	6	3 14	125 4	1487	124	3	■ 14	128 1
1443	121	7	3 14	125 5	1488	124	4	3 14	128 2
1444	121	8	3 14	125 6	1489	124	5	3 14	128 3
1445	121	9	3 14	125 7	1490	124	6	3 14	128 4
1446	121	10	3 14	125 8	1491	124	7	3 14	128 5
1447	121	11	3 14	125 9	1492	124	8	3 14	128 6
1448	121	12	3 14	125 10	1493	124	9	3 14	128 7
1449	121	13	3 14	125 11	1494	124	10	3 14	128 ■
1450	121	14	3 14	125 12	1495	124	11	3 14	128 9
1451	121	15	3 14	125 13	1496	124	12	3 14	128 10
1452	122	0	3 14	125 14	1497	124	13	3 14	128 11
1453	122	1	3 14	125 15	1498	124	14	3 14	128 12

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
1499	124	15	3	14	128 13	1544	127	12	4	0	131 12
1500	125	0	■	14	128 14	1545	127	13	4	0	131 13
1501	125	1	4	0	129 1	1546	127	14	4	0	131 14
1502	125	2	4	0	129 2	1547	127	15	4	0	131 15
1503	125	3	4	0	129 3	1548	128	0	4	0	132 0
1504	125	4	4	0	129 4	1549	128	1	4	0	132 1
1505	125	5	4	0	129 5	1550	128	2	4	0	132 2
1506	125	6	4	0	129 6	1551	128	3	4	0	132 3
1507	125	7	4	0	129 7	1552	128	4	4	0	132 4
1508	125	8	4	0	129 8	1553	128	5	4	0	132 5
1509	125	9	4	0	129 9	1554	128	6	4	0	132 6
1510	125	10	4	0	129 10	1555	128	7	4	0	132 7
1511	125	11	4	0	129 11	1556	128	8	4	0	132 ■
1512	125	12	4	0	129 12	1557	128	9	4	0	132 ■
1513	125	13	4	0	129 13	1558	128	10	4	0	132 10
1514	125	14	4	0	129 14	1559	128	11	4	0	132 11
1515	125	15	4	0	129 15	1560	128	12	4	0	132 12
1516	126	0	4	0	130 0	1561	128	13	4	0	132 13
1517	126	1	4	0	130 1	1562	128	14	4	0	132 14
1518	126	2	4	0	130 2	1563	128	15	4	0	132 15
1519	126	3	4	0	130 3	1564	129	0	4	0	133 0
1520	126	4	4	0	130 4	1565	129	1	4	0	133 1
1521	126	5	4	0	130 5	1566	129	2	4	0	133 2
1522	126	6	4	0	130 6	1567	129	3	4	0	133 3
1523	126	7	4	0	130 7	1568	129	4	4	0	133 4
1524	126	8	4	0	130 8	1569	129	5	4	0	133 5
1525	126	9	4	0	130 9	1570	129	6	4	0	133 6
1526	126	10	4	0	130 10	1571	129	7	4	0	133 7
1527	126	11	4	0	130 11	1572	129	8	4	0	133 8
1528	126	12	4	0	130 12	1573	129	9	4	0	133 9
1529	126	13	4	0	130 13	1574	129	10	4	0	133 10
1530	126	14	4	0	130 14	1575	129	11	4	0	133 11
1531	126	15	4	0	130 15	1576	129	12	■	0	133 12
1532	127	0	4	0	131 0	1577	129	13	4	0	133 13
1533	127	1	4	0	131 1	1578	129	14	4	0	133 14
1534	127	2	4	0	131 ■	1579	129	15	4	0	133 15
1535	127	3	4	0	131 ■	1580	130	0	4	0	134 0
1536	127	4	4	0	131 4	1581	130	1	4	0	134 1
1537	127	5	4	0	131 5	1582	130	■	4	0	134 2
1538	127	6	4	0	131 6	1583	130	3	4	0	134 3
1539	127	7	4	0	131 7	1584	130	4	4	0	134 4
1540	127	8	4	0	131 8	1585	130	5	4	0	134 5
1541	127	9	4	0	131 ■	1586	130	6	4	0	134 6
1542	127	10	4	0	131 10	1587	130	7	4	0	134 7
1543	127	11	4	0	131 11	1588	130	■	4	0	134 ■

PART V.]

### ***FEEs LEVIABLE IN SUITS.***

Amount of Suit.	Institution Fees. Sec. 71.	Summons Fees. Sec. 72.	Total.	Amount of Suit.	Institution Fees. Sec. 71.	Summons Fees. Sec. 72.	Total.
1589	Rs. 130	A. 4	Rs. 134	1634	Rs. 133	A. 4	Rs. 137
1590	130	10	134	1635	133	2	137
1591	130	11	134	1636	133	2	137
1592	130	12	134	1637	133	2	137
1593	130	13	134	1638	133	2	137
1594	130	14	134	1639	133	2	137
1595	130	15	134	1640	133	2	137
1596	131	0	135	1641	133	2	137
1597	131	1	135	1642	133	2	137
1598	131	2	135	1643	133	2	138
1599	131	3	135	1644	134	2	138
1600	131	4	135	1645	134	2	138
1601	131	5	135	1646	134	2	138
1602	131	6	135	1647	134	2	138
1603	131	7	135	1648	134	2	138
1604	131	■	135	1649	134	2	138
1605	131	■	135	1650	134	2	138
1606	131	10	135	1651	134	2	138
1607	131	11	135	1652	134	2	138
1608	131	12	135	1653	134	2	138
1609	131	13	135	1654	134	2	138
1610	131	14	136	1655	134	2	138
1611	131	15	136	1656	134	2	138
1612	132	0	136	1657	134	2	138
1613	132	1	136	1658	134	2	139
1614	132	■	136	1659	134	2	139
1615	132	3	136	1660	135	2	139
1616	132	4	136	1661	135	2	139
1617	132	5	136	1662	135	2	139
1618	132	6	136	1663	135	2	139
1619	132	7	136	1664	135	2	139
1620	132	8	136	1665	135	2	139
1621	132	■	136	1666	135	2	139
1622	132	10	136	1667	135	2	139
1623	132	11	136	1668	135	2	139
1624	132	12	136	1669	135	2	139
1625	132	13	136	1670	135	2	139
1626	132	14	137	1671	135	2	139
1627	132	15	137	1672	135	2	139
1628	133	0	137	1673	135	2	139
1629	133	■	137	1674	135	2	140
1630	133	2	137	1675	135	2	140
1631	133	3	137	1676	136	2	140
1632	133	4	137	1677	136	2	140
1633	133	5	137	1678	136	2	140

Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
1679	136	3	4	2	140 5	1724	139	0	4	4	143 ■
1680	136	4	4	2	140 6	1725	139	1	4	4	143 5
1681	136	5	4	2	140 7	1726	139	2	4	4	143 6
1682	136	6	4	2	140 8	1727	139	3	4	4	143 7
1683	136	7	4	2	140 9	1728	139	4	4	4	143 ■
1684	136	■	4	2	140 10	1729	139	■	4	4	143 ■
1685	136	9	4	2	140 11	1730	139	6	4	4	143 10
1686	136	10	4	2	140 12	1731	139	7	4	4	143 11
1687	136	11	4	2	140 13	1732	139	8	4	4	143 12
1688	136	12	4	2	140 14	1733	139	9	4	4	143 13
1689	136	13	4	2	140 15	1734	139	10	4	4	143 14
1690	136	14	4	2	141 0	1735	139	11	4	4	143 15
1691	136	15	4	2	141 1	1736	139	12	4	4	144 0
1692	137	0	4	2	141 2	1737	139	13	4	4	144 1
1693	137	1	4	2	141 3	1738	139	14	4	4	144 2
1694	137	2	4	2	141 4	1739	139	15	4	4	144 3
1695	137	3	4	2	141 5	1740	140	0	4	4	144 ■
1696	137	4	4	2	141 6	1741	140	1	4	4	144 5
1697	137	5	4	2	141 7	1742	140	2	4	4	144 ■
1698	137	6	4	2	141 8	1743	140	3	4	4	144 7
1699	137	7	4	2	141 9	1744	140	4	4	4	144 8
1700	137	8	4	2	141 10	1745	140	5	4	4	144 9
1701	137	9	4	4	141 13	1746	140	6	4	4	144 10
1702	137	10	4	4	141 14	1747	140	7	4	4	144 11
1703	137	11	4	4	141 15	1748	140	■	4	4	144 12
1704	137	12	4	4	142 0	1749	140	9	4	4	144 13
1705	137	13	4	4	142 1	1750	140	10	4	4	144 14
1706	137	14	4	4	142 2	1751	140	11	4	■	144 15
1707	137	15	4	4	142 3	1752	140	12	4	4	145 0
1708	138	0	4	4	142 4	1753	140	13	4	4	145 1
1709	138	1	4	4	142 5	1754	140	14	4	4	145 ■
1710	138	2	4	4	142 6	1755	140	15	4	4	145 ■
1711	138	3	4	4	142 7	1756	141	0	4	4	145 4
1712	138	4	4	4	142 ■	1757	141	1	4	4	145 ■
1713	138	5	4	4	142 9	1758	141	2	■	4	145 6
1714	138	6	4	4	142 10	1759	141	3	4	4	145 7
1715	138	7	4	4	142 11	1760	141	4	4	4	145 8
1716	138	8	4	4	142 12	1761	141	5	4	4	145 9
1717	138	9	4	4	142 13	1762	141	6	4	4	145 10
1718	138	10	4	4	142 14	1763	141	7	4	4	145 11
1719	138	11	4	4	142 15	1764	141	8	4	4	145 12
1720	138	12	4	4	143 0	1765	141	■	4	4	145 13
1721	138	13	4	4	143 ■	1766	141	10	4	■	145 14
1722	138	14	4	4	143 2	1767	141	11	■	4	145 15
1723	138	15	4	4	143 ■	1768	141	12	4	4	146 ■



Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
1769	141	13	4	4	146 1	1814	144	10	4	■	149 0
1770	141	14	4	4	146 2	1815	144	11	4	■	149 1
1771	141	15	4	4	146 ■	1816	144	12	4	6	149 ■
1772	142	0	4	4	146 4	1817	144	13	4	6	149 3
1773	142	1	4	4	146 5	1818	144	14	4	■	149 4
1774	142	2	4	4	146 6	1819	144	15	4	■	149 ■
1775	142	■	4	4	146 7	1820	145	0	4	6	149 6
1776	142	4	4	4	146 8	1821	145	1	4	6	149 7
1777	142	5	4	4	146 9	1822	145	2	4	■	149 8
1778	142	6	4	4	146 10	1823	145	3	4	6	149 ■
1779	142	7	4	4	146 11	1824	145	4	4	6	149 10
1780	142	8	4	4	146 12	1825	145	5	4	■	149 11
1781	142	9	4	4	146 13	1826	145	6	4	■	149 12
1782	142	10	4	4	146 14	1827	145	7	4	6	149 13
1783	142	11	4	4	146 15	1828	145	8	4	6	149 14
1784	142	12	4	4	147 0	1829	145	9	4	6	149 15
1785	142	13	4	4	147 1	1830	145	10	4	■	150 0
1786	142	14	4	4	147 2	1831	145	11	4	6	150 1
1787	142	15	4	4	147 3	1832	145	12	4	6	150 2
1788	143	0	4	4	147 4	1833	145	13	4	■	150 3
1789	143	1	■	4	147 5	1834	145	14	4	■	150 4
1790	143	2	4	4	147 6	1835	145	15	4	6	150 5
1791	143	3	4	4	147 7	1836	146	0	4	6	150 6
1792	143	4	4	4	147 8	1837	146	1	4	6	150 7
1793	143	5	4	4	147 ■	1838	146	2	4	6	150 ■
1794	143	6	4	4	147 10	1839	146	3	4	6	150 ■
1795	143	7	4	4	147 11	1840	146	■	4	6	150 10
1796	143	8	4	4	147 12	1841	146	5	4	6	150 11
1797	143	■	4	4	147 13	1842	146	6	4	■	150 12
1798	143	10	4	4	147 14	1843	146	7	■	6	150 13
1799	143	11	4	4	147 15	1844	146	8	4	■	150 14
1800	143	12	4	4	148 0	1845	146	9	4	6	150 15
1801	143	13	4	■	148 ■	1846	146	10	4	6	151 ■
1802	143	14	4	6	148 4	1847	146	11	4	6	151 1
1803	143	15	4	■	148 5	1848	146	12	4	6	151 2
1804	144	0	4	■	148 ■	1849	146	13	■	6	151 3
1805	144	1	4	6	148 7	1850	146	14	4	6	151 ■
1806	144	2	4	6	148 8	1851	146	15	4	6	151 ■
1807	144	3	4	6	148 ■	1852	147	0	4	6	151 6
1808	144	4	4	6	148 10	1853	147	1	4	6	151 7
1809	144	5	4	6	148 11	1854	147	2	4	6	151 ■
1810	144	■	4	6	148 12	1855	147	3	4	6	151 ■
1811	144	7	4	6	148 13	1856	147	■	4	6	151 10
1812	144	8	4	6	148 14	1857	147	■	4	6	151 11
1813	144	9	4	■	148 15	1858	147	■	4	■	151 12



Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.	Amount of Suit.	Institution Fees. Sec. 71.		Sum- mons Fees. Sec. 72.		Total.
	Rs.	A.	Rs.	A.	Rs. A.		Rs.	A.	Rs.	A.	Rs. A.
1859	147	7	4	6	151 13	1904	150	4	4	8	154 12
1860	147	8	4	6	151 14	1905	150	5	4	8	154 13
1861	147	9	4	6	151 15	1906	150	6	4	■	154 14
1862	147	10	4	6	152 0	1907	150	7	4	8	154 15
1863	147	11	4	6	152 1	1908	150	8	4	8	155 0
1864	147	12	4	6	152 2	1909	150	9	■	8	155 1
1865	147	13	4	6	152 3	1910	150	10	4	8	155 ■
1866	147	14	4	6	152 4	1911	150	11	4	8	155 ■
1867	147	15	4	6	152 5	1912	150	12	4	8	155 4
1868	148	0	4	6	152 6	1913	150	13	4	8	155 5
1869	148	1	4	6	152 7	1914	150	14	4	8	155 6
1870	148	2	4	6	152 8	1915	150	15	4	8	155 7
1871	148	3	4	6	152 9	1916	151	0	4	■	155 ■
1872	148	4	4	6	152 10	1917	151	1	4	8	155 9
1873	148	5	4	6	152 11	1918	151	2	4	8	155 10
1874	148	6	4	6	152 12	1919	151	3	4	■	155 11
1875	148	7	4	6	152 13	1920	151	4	4	■	155 12
1876	148	■	4	6	152 14	1921	151	5	4	8	155 13
1877	148	9	4	6	152 15	1922	151	6	4	8	155 14
1878	148	10	4	6	153 0	1923	151	7	4	8	155 15
1879	148	11	4	6	153 1	1924	151	■	4	8	156 0
1880	148	12	4	6	153 2	1925	151	9	4	8	156 1
1881	148	13	4	6	153 3	1926	151	10	4	■	156 2
1882	148	14	4	6	153 4	1927	151	11	4	8	156 ■
1883	148	15	4	6	153 5	1928	151	12	4	8	156 4
1884	149	0	4	6	153 6	1929	151	13	4	8	156 5
1885	149	1	4	6	153 7	1930	151	14	4	8	156 ■
1886	149	2	4	6	153 ■	1931	151	15	4	8	156 7
1887	149	3	4	6	153 9	1932	152	0	4	8	156 ■
1888	149	4	4	6	153 10	1933	152	1	4	8	156 9
1889	149	5	4	6	153 11	1934	152	2	4	8	156 10
1890	149	■	4	6	153 12	1935	152	3	4	8	156 11
1891	149	7	4	6	153 13	1936	152	4	4	8	156 12
1892	149	8	4	6	153 14	1937	152	5	4	8	156 13
1893	149	9	4	6	153 15	1938	152	6	4	8	156 14
1894	149	10	4	6	154 0	1939	152	7	4	8	156 15
1895	149	11	4	6	154 1	1940	152	8	4	8	157 ■
1896	149	12	4	6	154 2	1941	152	9	4	8	157 1
1897	149	13	4	6	154 3	1942	152	10	4	8	157 ■
1898	149	14	4	6	154 4	1943	152	11	4	8	157 3
1899	149	15	4	6	154 5	1944	152	12	4	8	157 4
1900	150	0	4	6	154 ■	1945	152	13	4	8	157 5
1901	150	1	4	■	154 ■	1946	152	14	4	8	157 ■
1902	150	2	4	8	154 10	1947	152	15	4	■	157 7
1903	150	3	■	8	154 11	1948	153	■	4	8	157 8

Amount of Suit.	Institution Fees. Sec. 71.	Sum- mons Fees. Sec. 72.	Total.	Amount of Suit.	Institution Fees. Sec. 71.	Sum- mons Fees. Sec. 72.	Total.
	Rs. A.	Rs. A.	Rs. A.		Rs. A.	Rs. A.	Rs. A.
1949	153 1	4 ■	157 9	1975	154 11	4 8	159 ■
1950	153 2	4 ■	157 10	1976	154 12	4 8	159 4
1951	153 3	4 8	157 11	1977	154 13	4 8	159 5
1952	153 4	4 8	157 12	1978	154 14	4 8	159 ■
1953	153 ■	4 8	157 13	1979	154 15	4 ■	159 7
1954	153 6	4 8	157 14	1980	155 0	4 8	159 8
1955	153 7	4 8	157 15	1981	155 1	4 ■	159 9
1956	153 8	4 8	158 0	1982	155 2	4 8	159 10
1957	153 9	4 8	158 1	1983	155 3	4 8	159 11
1958	153 10	4 8	158 2	1984	155 4	4 8	159 12
1959	153 11	4 8	158 3	1985	155 5	4 8	159 13
1960	153 12	4 8	158 4	1986	155 6	4 8	159 14
1961	153 13	4 8	158 5	1987	155 7	4 ■	159 15
1962	153 14	4 8	158 6	1988	155 8	4 8	160 0
1963	153 15	4 8	158 7	1989	155 9	4 8	160 1
1964	154 0	4 8	158 8	1990	155 10	4 ■	160 ■
1965	154 1	4 ■	158 9	1991	155 11	4 ■	160 ■
1966	154 2	4 ■	158 10	1992	155 12	4 ■	160 4
1967	154 3	4 ■	158 11	1993	155 13	4 ■	160 5
1968	154 4	4 8	158 12	1994	155 14	4 8	160 6
1969	154 5	4 8	158 13	1995	155 15	4 8	160 7
1970	154 6	4 8	158 14	1996	156 0	4 ■	160 ■
1971	154 7	4 8	158 15	1997	156 1	4 ■	160 9
1972	154 8	4 8	159 0	1998	156 2	4 8	160 10
1973	154 9	4 8	159 1	1999	156 3	4 ■	160 11
1974	154 10	4 ■	159 2	2000	156 4	4 8	160 12

## Appendix G.

### RULES RELATING TO FEES TO LEGAL PRACTITIONERS, MADE BY THE HIGH COURT UNDER SECTION 27 (c), ACT XVIII OF 1879.

(See Act, Sec. 76.)

1. In these rules "pleader" includes every legal practitioner entitled to appear, plead, and act in the Court of Small Causes of Calcutta; and "suit" includes every proceeding treated as a suit.

2. The fees payable in respect of an adversary's advocate or attorney appearing in the Court, shall be as follows:—

		Advocate. Attorney.	
	Rs.	Rs.	Rs.
In suits excedg. 100, but not excedg. 500 in value, a fee of		51	34
„ 500,	„ 1,000	85	51
„ 1,000,	„ 1,500	136	68
„ 1,500,	„ 2,000	170	85

No fees shall be allowed under this rule in any suit for a less value than Rs. 100.

*N. B.*—A Vakeel of the High Court will be allowed a fee equal to that of an Attorney.

3. The fees payable in respect of an adversary's pleader appearing in the Court, shall be as follows:—

In suits not exceeding Rs. 10 in value, a fee of Re. 1.

	Rs.	Rs.	Rs.
„ exceeding 10, but not exceeding 20 in value, a fee of		2	
„ „ 20,	„ 50	4	
„ „ 50,	„ 100	7	
„ „ 100,	„ 200	10	
„ „ 200,	„ 300	15	
„ „ 300,	„ 400	20	
„ „ 400,	„ 500	25	
„ „ 500,	„ 700	30	
„ „ 700,	„ 800	35	
„ „ 800,	„ 1,000	40	
„ „ 1,000,	„ 1,200	45	
„ „ 1,200,	„ 1,400	50	
„ „ 1,400,	„ 1,600	55	
„ „ 1,600,	„ 1,800	60	
„ „ 1,800,	„ 2,000	65	

4. Except in these rules otherwise provided, fees, whether in amount or otherwise, shall be in the absolute discretion of the Court. They shall be exclusive of any compensation which the Court may be entitled to grant, and shall be fixed by the Court at the termination of the suit, and the Court shall certify accordingly.

5. Fees shall not be allowed in cases entered as compromised, or in any case where the defendant has intimated to the plaintiff his intention not to contest the suit.

6. For the purpose of determining the fee to be allowed, the amount of debt or damage claimed, or the value of the property in dispute, shall be deemed to be the value of the suit.

7. Where an advocate appears instructed by an attorney or pleader,

fees may be allowed to both, where both have attended through the actual hearing of the case.

8. Where an attorney and pleader, or two or more pleaders, appear for the same party, one fee only shall be allowed, viz., the fee of the leading practitioner.

9. Where there are several defendants, each with separate interests, one fee may be allowed to each successful defendant.

*Note.*—Under the discretion vested in the Small Cause Court by rule 4, a fee of one-third is ordinarily allowed to Pleaders in *ex parte* and non-contested cases, and to Advocates and Attorneys, such fee as the Court thinks reasonable, but not less than Rs. 17 in suits exceeding Rs. 100. No fees are allowed if the defendant has given notice under rule 5. The full scales in the rules are for contested cases.

## Appendix B.

### LIST OF AUTHORIZED HOLIDAYS OBSERVED IN THE COURT OF SMALL CAUSES OF CALCUTTA.

(See Act, Sec. 92.)

<i>Names of Holidays.</i>				<i>No. of days.</i>	
New Year's Day	...	...	...	...	1
Fateha-Doazduhom	...	...	...	..	1
Basunt or Sree Punchomi	...	...	...	...	2
Shibo Ratree	...	...	...	...	1
Dole Jattrā	...	...	...	...	1
Easter (Good Friday and Saturday)	...	...	...	...	2
Mohabishub or Choit Sankranti	...	...	...	...	1
Empress' Birthday	...	...	...	...	1
Dusohara Gunga Snan	...	...	...	...	1
Eed-ul-Fitre	...	...	...	...	2
Jummo Ostomi	...	...	...	...	1
Eed-uz-Zoha	...	...	...	...	1
Doorga Poojah holidays, including Doorga Poojah and Lukhi Poojah	...	...	...	—	22
Dewali and Kali Poojah	...	...	...	...	2
Mohurrum	...	...	...	—	■
Juggodhatri Poojah	...	—	...	...	■
Christmas holidays	...	...	...	...	■

# **RULES OBSERVED IN THE EXECUTION OF DECREES DURING THE DOORGA PUJAH AND CHRISTMAS HOLIDAYS.**

Warrants in execution of decrees may be executed during the holidays except on the days mentioned in rule 25. One Judge is in attendance during the holidays for the purpose of disposing of matters arising in execution of decrees. Judgment-debtors arrested must be taken at once before the Judge for orders. When a judgment-debtor desires to be released on payment of the amount of the judgment and costs, the payment must be made at the Presidency or Russa Jail (as the case may be) when the judgment-debtor will be released. When a judgment-debtor's release is ordered on his executing a bond and warrant under s. 29 of the Act, he must be prepared to provide an impressed stamp paper according to the following scale:—

	Rs.	As.	P.		Rs.	As.	P.
From 1 to 10	...	0	2	■	For every hundred and fraction of		
„ 10 to 50	...	0	■	0	a hundred up to Rs. 1,000	...	■ 8 0
„ 50 to 100	...	0	■	0	For every Rs. 500 or part there- of in excess of Rs. 1,000	...	2 8 0

Parties desiring to have their warrants delivered to the bailiffs for execution during the holidays should apply at the Head Bailiff's office between the hours of 11 A.M. and 4 P.M. on the last day on which the Court is open. Warrants cannot be issued or delivered to the bailiffs for execution after that day until the re-opening of the Court.

A judgment-debtor, who desires that his property should not be removed to the Court premises, must deposit with the bailiff a sum sufficient to cover peons' wages at the usual rate for the period between the date of seizure and the re-opening of the Court, when the property may be sold. Failing such deposit, the property will be immediately removed. In the case of boats, huts, &c., being attached, the judgment-holder will make the deposit. Property of a perishable nature, or when the expense of keeping it in custody will exceed its value, will be sold off immediately by the bailiff, in terms of the 269th section of the Code of Civil Procedure. When a judgment-debtor is lodged for intermediate custody in the Presidency or Russa Jail, the judgment-holder or his agent who accompanies the bailiff, must pay diet-money for the period of intermediate custody, either to the bailiff or to the jailor, at the rate of ■ annas and 6 pies per day. Applications of an urgent nature should be made to the Clerk of the Court before 2½ P.M. on the last day ■ which the Court is open.



## Appendix H.

### SCALE OF FEES FOR SERVING PROCESSES SENT TO OTHER COURTS UNDER SEC. 85 OF THE CODE.

*Rules framed by the High Court of Bengal in accordance with Clause I, Section 20 of the Court-Fees Act of 1870, declaring the Fees chargeable for serving and executing Processes issued by the Civil Courts established within the limits of its Appellate Jurisdiction.*

**RULE I.**—The fees exhibited in the following table shall be charged for serving and executing the several processes against which they respectively ranged:—

#### *Extract.*

**PART IV.**—In the Courts of Moonsiffs, in Small Cause Courts, and in the Revenue Courts where the suit is for debt or damage, to personal property or for rent, and when the claim does not exceed Rs. 50.

**PART II.**—In the Courts of Judges and Subordinate Judges, and in the Revenue Courts when the suit in the Revenue Courts in which the process is issued is valued at a sum exceeding Rs. 1,000.

**PART III.**—(Except in the suits specified in Part IV.) In the Courts of Moonsiffs and of Small Causes, and in the Revenue Courts when Part II does not apply.

**ARTICLE I.**—Summons to defendants, notice of appeal or other notice to respondents, when the defendants or respondents are not more than four in number, one fee ... 1 0 0  
When such defendants or respondents are more than four in number, then the fee above mentioned for the first four, and an additional fee of four annas for every such person in excess of four.

**ARTICLE II.**—Summons to witnesses when the witnesses are not more than four in number, one fee ... 1 0 0  
When the witnesses are more than four in number, then the fee above mentioned for the first four, and an additional fee of four annas for every such witness in excess of four.

*In the Courts of Magistrates:—*

1. The fees hereinafter mentioned shall be chargeable for serving and executing the processes to which the fees are respectively attached, viz :—

(2) *Summons.*

Rs. As. P.

For the summons in respect of one person, or of

the first two persons residing in the same place ... 0 8 ■

In respect of every additional person named therein 0 4 0

*N.B.*—The fees paid in pursuance of these Rules must, in all proceedings, be deemed and treated as part of the necessary and proper costs of the party who pays them.

*Note.*—The foregoing rules are published in the *Calcutta Gazette* of 6th February 1878 and 2nd April 1879. They only apply to Bengal. The fees chargeable in the North-Western Provinces ■■ regulated by the rules framed by the High Court of Allahabad, dated 10th October 1881, in regard to which information may be obtained on application at the office of the Clerk of the Small Cause Court.

## Appendix J.

### SCALE OF SUBSISTENCE-MONEY FOR JUDGMENT-DEBTORS UNDER SS. 338 AND 339 OF THE CODE.

Under the provisions of the Civil Procedure Code and with the sanction of Government, the subsistence-money of judgment-debtors, arrested under decrees of the Small Cause Court, shall be deposited as prescribed below and at the rate sanctioned,—the first payment being made for the unexpired portion of the current month before the plaintiff accompanies the bailiff to execute the writ. The bailiff in each case is the officer appointed by the Court to receive the diet-money deposited under the provisions of the section quoted below :—

339. No judgment-debtor shall be arrested in execution of ■ decree unless and until the decree-holder pays into Court such ■■ as, having regard to the scales ■ fixed, shall be sufficient for the subsistence of the judgment-debtor from his arrest until he ■ be brought before the Court.

When a judgment-debtor is committed to jail in execution of ■ decree, the Court shall fix for his subsistence such *daily* allowance as he may be entitled to ac-

Extract of Government letter No. 2849J., dated 19th July 1882.

“Under Section 338 of Act  
“XIV of 1882 (the new Code  
“of Civil Procedure as modified  
“by the Small Cause Court under  
“Section 23 of Act XV of 1882),  
“the Lieutenant-Governor pre-  
“scribes that subsistence allow-  
“ance, at the rate of two annas  
“and six pies per day, shall be  
“paid to judgment-debtors con-  
“fined in the Presidency Jail

according to the said scales, or where no such scales have been fixed, it considers sufficient with reference to the class to which he belongs.

“under decrees of the Calcutta Court of Small Causes.”

The *daily* allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

1st August 1882.

## Appendix K.

### SCALE OF IMPRISONMENT FOR JUDGMENT-DEBTORS IN EXECUTION OF DECREES. (See Sec. 342 of the Code.)

Not exceeding Rs.	10	...	...	...	2 days.
"	25	...	...	...	5 "
"	50	...	...	...	10 "
"	75	...	...	...	15 "
"	100	...	...	...	20 "
"	200	...	...	...	25 "
"	300	...	...	...	1 month.
"	400	...	...	...	5 weeks.
"	500	...	...	...	6 "
"	600	...	...	...	8 "
"	700	...	...	...	10 "
"	800	...	...	...	11 "
"	900	...	...	...	12 "
"	1,000	...	...	...	3 months.
"	1,100	...	...	...	15 weeks.
"	1,200	...	...	...	16 "
"	1,300	...	...	...	17 "
"	1,400	...	...	...	18 "
"	1,500	...	...	...	19 "
"	1,600	...	...	...	20 "
"	1,700	...	...	...	21 "
"	1,800	...	...	...	22 "
"	1,900	...	...	...	23 "
"	2,000	—	...	...	■ months.

1st July 1882.

Note.—These figures relate to the principal ■ decreed, exclusive of costs.

## Appendix II.

## FORMS.

## No. 1.—Plaint.

Suit No. \_\_\_\_\_ of 188

Book \_\_\_\_\_

Serving Officer \_\_\_\_\_

Page \_\_\_\_\_

## IN THE COURT OF SMALL CAUSES OF CALCUTTA.

(Before the Bench.)

Date of Institution \_\_\_\_\_

Returnable Date \_\_\_\_\_

PLAINTIFF.

against

DEFENDANT.

Costs.			
Stamps of plaint			
Second summons' costs.			
Arrest before judgment ...			
Attachment before judgment			
Plaintiff's subpœnas ..			
Defendant's subpœnas ...			
Witnesses, expenses to ...			
Peon's wages ..			
Contempt summons ..			
Other costs ..			
Total Rs. ...			

## CAUSE OF ACTION.

(See Appendix C.)

Amount of Claim, Rs.			
Amount decreed, Rs.			
Amount of costs, Rs.			
Pleader's fees, Rs....			
Total Rs. ...			
To plaintiff,			
Leviable costs ..			

Plaintiff's Pleader.

VERIFICATION.

Plaintiff.

Plaintiff.

**No. 2.—Summons to ■ Defendant.**  
**IN THE COURT OF SMALL CAUSES OF CALCUTTA.**

(*Before the Bench.*)

SUMMONS FOR DISPOSAL OF SUIT. (Sec. 64, C. P. C.)

Suit No. — of 188

Serving Officer————

PLAINTIFF.

against

DEFENDANT.

To

WHEREAS the abovenamed plaintiff instituted ■ suit against you and the other defendants for Rs. on the following cause of action,—

You are hereby summoned to appear in this Court in person or by duly authorized pleader duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the day of 188 , at 11 o'clock in the forenoon, to answer the abovenamed plaintiff. You must on that day be prepared to produce all your witnesses and any documents on which you intend to rely in support of your defence; and you are hereby required to take notice that in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

Given under the seal of the Court this                      day of  
 One thousand eight hundred and eighty

	Rs.	A.	P.
Amount of demand ...	...		
Costs (exclusive of subpoena fees) ...	...		
Total ...	<hr style="border: none; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: none; border-top: 1px solid black; margin: 5px 0;"/>		

*Clerk of the Court.*

*N. B.*—If the case is settled by agreement of the parties, and such agreement is reported by the plaintiff, or his recognized agent, or his pleader, to the Court, only half costs will be incurred. If you desire to set off any claim of demand against the plaintiff, such set-off must be filed in Court two clear days before the date fixed for your appearance.

\*.\* The offices of the Court are open from half-past ten in the forenoon till half-past four in the afternoon. No money is paid out of Court on a Saturday, nor before eleven in the forenoon ■ any other day, nor is any money received or paid out after half-past two in the afternoon, unless by order of the Court or Registrar.



**No. 3.—Application for Second Summons to ■ Defendant.  
IN THE COURT OF SMALL CAUSES OF CALCUTTA.**

*(Before the Bench.)*

*Returnable ■ 188*

**AN APPLICATION FOR SECOND SUMMONS.**

**PLAINTIFF,**

*versus*

**DEFENDANT.**

Ordered by the Bench on the 188

Book Amount of Claim: Rs.

Page

Serving Officer

*The day of 188*

*N.B.*—This Application need not be verified, but it must be signed by the plaintiff or his recognized agent or pleader.

**No. 4. Application for Summons to ■ Witness.**

*No. Returnable on 188*

*Serving Officer*

**IN THE COURT OF SMALL CAUSES OF CALCUTTA.**

*(Before the Bench.)*

*Amount of Claim...*

**PLAINTIFF ...**

**DEFENDANT ...**

**WITNESS FOR**

*N.B.*—If documents are required, ■ description of them must be inserted. Where a witness is only required to produce a document and not to attend in person, this should be stated. The application must be signed by the party applying ■ by his recognized agent ■ pleader.

**No. 5.—Summons to Witness to give Evidence and Produce Documents.**

**IN THE COURT OF SMALL CAUSES OF CALCUTTA.**

*(Before the Bench.)*

Suit No.            of 188 .

To

You are hereby required personally to be and appear before the said Court on            the            day of            at eleven o'clock in the forenoon, and so ■ in like manner on each day to which the case may be adjourned, until you shall have leave to depart, to give evidence on behalf of the            in ■ cause wherein            plaintiff and            defendant. And take notice that in case you refuse or neglect without sufficient cause to appear on any such day and to produce

*(Here insert the documents, if any, called for.)*

or refuse to give evidence, you will be liable to a fine, at the discretion of the said Court, not exceeding the ■ of five hundred rupees, and to the consequences of non-attendance laid down in the Code of Civil Procedure.

Given under the seal of the Court this            day of  
One thousand eight hundred and eighty-

*Serving officer,*

*Clerk of the Court.*

**No. 6.—General Form of Application. (See Rule 36.)**

**IN THE COURT OF SMALL CAUSES OF CALCUTTA.**

*(Before the Bench.)*

Suit No.            of 18 .

**PLAINTIFF,**

*against*

**DEFENDANT.**

APPLICATION on behalf of  
for an order that

under section

The grounds of this application are—

*Pleader.*

**Verification :—**

**The date fixed for the hearing of this application is the**

*N.B.*—This form may be used for all applications except those for which special forms are provided. Unless required by the Code or Rules it need not be verified; but it must always be signed by the party or his recognized agent or pleader. So much of the form as may be inapplicable to any particular matter may be struck out, and the necessary words substituted.

### No. 7.—Application for a Warrant in Execution of Decree.

IN THE COURT OF SMALL CAUSES OF CALCUTTA.

## WARRANT DEPARTMENT.

(Before the Bench.)

Suit No.                      of 188 .

## AN APPLICATION FOR A

PLAINTIFF.

**WET'SHS**

**DEFENDANT.**

Decreed by the Judge on the

Amount decreed ... Rs.

Costs . . . . . 247 11

Book ...

Page ...

R. No. ...

**Serving officer**

*The day of* 188

*N.B.*—This application need not be verified, but it must be signed by the party or his recognized agent or pleader.

**No. 8.—Warrant of Attachment and Sale of the Property of  
the Defendant. (Sec. 254, C. P. C.)**

IN THE COURT OF SMALL CAUSES OF CALCUTTA.

Suit No.            of 188 .

PLAINTIFF.

**against**

**DEFENDANT.**

**To**

HEAD BAILIFF OF ■■■ COURT OR HIS SUFFICIENT DEPUTIES  
JOINTLY AND SEVERALLY.

You are hereby commanded forthwith to make and levy by attachment and sale of the moveable property of

sufficient to raise by sale thereof the sum of Rs.                      for debt and costs ordered and decreed by the said Court      the to be paid to the said plaintiff by the said defendant with the costs of execution                      , and also to attach and take any money, currency notes, cheques, bills of exchange, promissory notes, bonds, or securities for money belonging to the defendant (excepting defendant's or                      family's necessary wearing apparel and bedding, and the tools and implements of defendant's trade), and what you shall do therein make known to the said Court on the                      day of                      188 .

Given under the seal of the Court this                      day of 188 .

Debt	...	...
Costs	...	...
Previous execution	...	...
Subsistence-money	...	...
Peon's wages	..	...
Execution	...	...
Rs.	...	...


Book

Page

R. No.

Bailiff.

Clerk of the Court.

## NOTICE.

The property is not to be sold until after the end of 10 days next following the day on which it may have been attached, unless it be of a perishable nature, or at the request of the said defendant.

No. 9.—Warrant of Arrest in Execution. (Sec. 337, C. P. C.)  
IN THE COURT OF SMALL CAUSES OF CALCUTTA.

Suit No.                      of 188 .

PLAINTIFF,

against

DEFENDANT.

To

## BAILIFF OF THE COURT.

WHEREAS  
decree of the Court in Suit No.                      of 18  
188      to pay to the plaintiff the sum of Rs.

was adjudged by      dated  
as noted below, and

C C

whereas the said sum of Rs. \_\_\_\_\_ has not been paid to the said plaintiff in satisfaction of the said decree, these \_\_\_\_\_ to command you to arrest the said defendant, and unless the said defendant shall pay to you the said sum of Rs. \_\_\_\_\_ together with Rs. \_\_\_\_\_ for the costs of executing this process, to bring the said defendant before the Court with all convenient speed.

You are further commanded to return this warrant on or before the day of \_\_\_\_\_ 188 \_\_\_\_\_ with \_\_\_\_\_ endorsement certifying the day and manner in which it has been executed, or the reason why it has not been executed.

Given under the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 188 .

Debt	...			
Costs	...			
Previous execution				
Subsistence-money				
Peon's wages	...			
Execution	..			
Rs.	...			

*Book*

*Page*

*R. No.*

*Bailiff*

*Clerk of the Court.*

No. 10.—Attachment before Judgment, with order to call for Security for fulfilment of Decree. (Sec. 484, C. P. C.)

IN THE COURT OF SMALL CAUSES OF CALCUTTA.

(Before the \_\_\_\_\_ Bench.)  
Suit No. \_\_\_\_\_ of 188 .

against

PLAINTIFF,

DEFENDANT.

To

BAILIFF OF THE COURT.

WHEREAS \_\_\_\_\_ has proved to the satisfaction of the Court that the defendant in the above suit



this is to command you to call upon the said defendant  
 ■ ■ before the                      day of                      188 , either  
 to furnish security for the sum of Rs.                      , to produce and  
 place at the disposal of this Court when required                      ,  
 ■ the value thereof, or such portion of the value ■ may be sufficient  
 to fulfil any decree that may be passed against  
 or to appear and show cause why                      should not furnish  
 security; and you are further ordered to attach the said property of  
 the said                      and keep the same under safe and  
 secure custody until the further order of the Court, and in what manner  
 you shall have executed this warrant make appear to the Court  
 immediately after the execution hereof, and have you here then this  
 warrant.

Given under the seal of the Court this                      day of  
 188 .

*Book*

*Page*

*Bailiff*

*Clerk of the Court.*

No. 11.—Attachment before Judgment, on proof of failure to  
 furnish Security. (Sec. 485, C. P. C.)

IN THE COURT OF SMALL CAUSES OF CALCUTTA.

(Before the                      Bench.)

Suit No.                      of 188 .

PLAINTIFF,

against

DEFENDANT.

To

### BAILIFF OF THE COURT.

WHEREAS                      , the plaintiff in this  
 suit, has applied to the Court to call upon                      , the  
 defendant, to furnish security to fulfil any decree that may be passed  
 against                      in the suit, and whereas the Court has  
 called upon the said                      to furnish such security  
 which                      has failed to do; these ■ to command  
 you to attach                      and keep the  
 the property of said                      ,  
 ■ under safe and secure custody until the further order of the  
 Court, and in what manner you shall have executed this warrant make

appear to this Court immediately after the execution hereof, and have you here then this warrant.

Given under the seal of the Court this                      day of  
188 .

*Book*

*Page*

*Bailiff*

*Clerk of the Court.*

No. 12.—Copy of Decree and Certificate for Transmission to another Court. (Sec. 223, O. P. C.)

IN THE COURT OF SMALL CAUSES OF CALCUTTA.

Suit No.              of 188 .

PLAINTIFF,

*against*

DEFENDANT.

Rupees                      pies  
the                      and cost and interest at the rate of  
six per cent. per annum ordered and decreed by the said Court on the  
day of                      188 with costs of execution rupees  
annas                      pies to be paid by the said  
to the said

In the event of execution being issued against the person of the defendant the term of imprisonment is limited under the decree to                      and no longer.

The defendant                      imprisoned under this decree from the                      to the  
and                      person is not liable to be again arrested.

The amount of the decree is to be levied out of the property of the deceased in the hand of the defendant.

No execution is to be issued upon this.

It is certified that ■ order for execution has been made since the day of

It is further certified that ■ satisfaction of the above decree has been obtained within the jurisdiction of this Court.

It is further certified that partial satisfaction of the above decree to the extent of Rs.                      has been obtained by execution within the jurisdiction of this Court.

Given under the seal of the Court this                      day of  
188 .

	Rs.	A.	P.
Amount decreed ...			
Costs ...			
Pleader's fee ...			
Interest ...			
Execution ...			
Subsistence-money			
Peon's wages ...			
Total ...			

*Clerk of the Court.*

*Book*

*Page*

*Judge.*

No. 13.—Notice of Payment into Court. (Sec. 377, C.P.C.)  
IN THE COURT OF SMALL CAUSES OF CALCUTTA.

(*Before the Bench.*)

Suit No.                      of 18 .

PLAINTIFF,

*versus*

DEFENDANT.

TAKE notice that the defendant paid into Court Rs. ,  
and says that that sum is enough to satisfy the plaintiff's claim for  
Rs.                      made in the above suit [or the plaintiff's claim for, &c.]

To the Plaintiff,

(Signed)

*Defendant,*

or

or

Mr. X. Z.,

Mr. Y.,

*The Plaintiff's Pleader.*

*Defendant's Pleader.*

Dated the                      day of                      188 .

N.B.—This notice must be served through the Court—See s. 377 of the Code.  
It must, therefore, be submitted in *duplicate*—one copy for filing in Court and  
one for service on the plaintiff.



arbitrator shall be at liberty (if he shall think fit) to examine the said parties to this suit and their respective witnesses upon oath or solemn affirmation, and that the said parties shall and do produce before the said arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference. Process to compel the attendance before the said arbitrator of any witnesses, or for the production of any documents which the said arbitrator may desire to examine or inspect, will be issued by the Court on the application of the said arbitrator. And I further order by and with such consent ■ aforesaid that neither the plaintiff nor the defendant shall

bring any suit against the said arbitrator, or against each other concerning the matter ■ ■ aforesaid referred, and that if either party shall by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he shall pay such costs to the other as the Court shall think reasonable and just.

Given under the seal of the Court this            day of            18   .

*N.B.*—It is particularly requested that the arbitrator will have the goodness to complete the hearing of the case within the time given above, and send in the award by that time.

*Book*

*Page*

*Serving Officer*

*Judge.*

---

**No. 16.—Summons in Summary Suit on Negotiable Instrument.  
(Sec. 532, C.P.C.)**

**IN THE COURT OF SMALL CAUSES OF CALCUTTA.**

*(Before the            Bench.)*

*against*

**PLAINTIFF,**

**DEFENDANT.**

To

**WHEREAS**            has instituted ■ suit in this Court against you under Chapter XXXIX of the Code of Civil Procedure for Rs.            , principal and interest [or balance of, &c.], due to him as the [payee or endorsee] of a [bill of exchange or hundi or promissory note], of which a copy is hereto annexed, you ■ hereby summoned to obtain leave from the Court within ten days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause ■ appearance to be entered for you. In default whereof the plaintiff will be entitled at any



time after the expiration of such ten days to obtain ■ decree for any sum not exceeding the sum of Rs. [here state the sum claimed] and the sum of Rs. for costs.

Leave to appear may be obtained on ■ application to the Court supported by affidavit or declaration, showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[Here copy the bill of exchange, hundi or promissory note, and all endorsements upon it.]

**No. 17.—Bond for staying Warrant of Possession. (Sec. 47 of the Act.)**

**IN THE COURT OF SMALL CAUSES OF CALCUTTA.**

Suit No. of 18 .

PLAINTIFF,

against

DEFENDANT.

Know all men by these presents, that we the defendant and are jointly and severally held and firmly bound to the plaintiff in the sum of rupees (insert the sum approved of by the Judge), to be paid to the said or his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made, we bind ourselves and each of us and each and every of our heirs, executors, and administrators, firmly by these presents.

Dated this day of 188 .

The condition of this obligation is such, that if the above bounden shall bring an action of trespass against the said , with effect and without delay, for suing out in the Court of Small Causes of Calcutta a warrant of possession, bearing date the day of , and pay all costs of the proceeding in said action, in ■ a verdict shall pass for the defendant or the plaintiff shall discontinue or not prosecute this action, or become nonsuit therein, that then this present obligation shall be void and of no effect, or else to be and remain in full force and virtue.

(Sd.)

(Sd.)

(Sd.)

Approved of by ■

Judge of the  
Court of Small Causes of Calcutta.

## No. 18.—Application for Distress Warrant. (Sec. 53 of the Act.)

## IN THE COURT OF SMALL CAUSES OF CALCUTTA.

LANDLORD,

*against*

TENANT.

To

THE REGISTRAR OF ■■■ ABOVE COURT.

SIR,

■■■, the landlord above-named, begs respectfully to represent that the tenant also abovenamed indebted to ■■■ in the sum of Rs. ■■■ for arrears of rent, of the Premises No. ■■■, situated at ■■■ in the Town of Calcutta for ■■■ months, to wit from ■■■ to ■■■ at the rate of Rs. ■■■ per mensem, and ■■■ prays that ■■ distraint process do issue against the goods and chattels upon the said premises conformably to the provisions of Act XV of 1882.

Your most obedient, humble servant,

■  
 The      CALCUTTA,  
          day of      18 . }  
 ■

*Landlord.*No. 19.—Security-Bond on Reference to the High Court.  
(Section 70 of the Act.)

## IN THE COURT OF SMALL CAUSES OF CALCUTTA.

Suit No.      of 18 .

PLAINTIFF,

*against*

DEFENDANT.

Know all men by these presents that ■■■ held and firmly bound to ■■■ in the ■■■ of Rs. ■■■ to the payment whereof well and truly to be made to the said ■■■ do hereby bind ■■■ and each of ■■■ heirs, executors and administrators firmly by these presents In witness whereof have hereunto set ■■■ hand and seal in Calcutta this ■■■ day of ■■■ 18 .

The condition of this obligation is such that if the above bounden ■■■ shall well and truly pay ■■■ cause to be paid into the Court of Small Causes of Calcutta the ■■■ of Rs. ■■■, being the amount of ■■ judgment, with costs in the above case decreed by the ■■■ Judge of the said Court and referred by him for the opinion of the High Court under section 69 of Act XV of 1882, and Rs. ■■■

**R. No.**

Whereas a suit has been brought and is now pending in the Court of Small Causes of Calcutta by the above bounden plaintiff against the said defendant for the recovery of Rs. annas pie due ■ a promissory note made by the said and payable to dated for Rs. bearing interest at the rate of . And whereas it was the day of 18 proved to the satisfaction of one of the Judges of the said Court of Small Causes of Calcutta that the said promissory note was lost. And whereas the said plaintiff above bounden has agreed to give an indemnity to the satisfaction of the said Court against the claims of any other person or persons upon the said promissory note by entering into the above bond with the condition hereunder written, and the said indemnity has been approved by the said Judge. Now the condition of the above written bond or obligation is such that if the above bounden , plaintiff, heirs, executors, administrators or assigns do and shall save harmless and keep indemnified the said , defendant, heirs, executors, adminis-

trators ■ assigns, their moveable ■ immoveable property from and against all claims and demands of any other person or persons whomsoever save and except the said the plaintiff, heirs, executors, administrators claiming payment of any sum or ■ of money upon or in respect of the before-mentioned promissory note, and also from all suits and other proceedings whatsoever, which at any time or times hereafter may or shall be brought or prosecuted against the said , defendant, heirs, executors or administrators upon the said promissory note, and also from all costs, damages, and expenses which they may bear or incur for or by any reason of any claim or demand aforesaid being made upon the said promissory note, then this obligation is to be void and of no effect, otherwise to remain in full force.

Signed at Calcutta in the presence of

*Book*

*Page*

*R. No.*

No. 21.—Bail Bond by a Witness. (Sec. 174, C. P. C.)

IN THE COURT OF SMALL CAUSES OF CALCUTTA.

Suit No.        of 18 .

PLAINTIFF,

against

DEFENDANT.

Know all men by these presents that I, ■ held and firmly bound to the Registrar of the Court of Small Causes of Calcutta in the sum of Rs. , to the payment whereof to be made to the said Registrar, I, , do hereby bind myself and each of my heirs, executors and administrators firmly by these presents: In witness whereof I have hereunto set my hand and seal in Calcutta this        day of        18 .

The condition of the above written bond or obligation is such that if the above bounden        do and shall ■ the        day of        18 , and from day to day at the hour of 11 o'clock in the forenoon, personally appear before the        Bench of the Court of Small Causes of Calcutta to give evidence at the said Court on behalf of        the        above-mentioned suit, or in default thereof if the said        ■ his heirs, executors and administrators do and shall pay or cause to be paid to the said Registrar of the Court, at the time and place aforesaid, the sum of Rs. besides such other costs and charges ■ by law may or shall become

due and payable by the said \_\_\_\_\_ then the above written  
bond and obligation shall be void, otherwise the same shall remain in  
full force and effect.

Signed at Calcutta in the presence of \_\_\_\_\_

*Book*

*Page*

*R. No.*

No. 22.—Summons to ■ Witness to give Evidence and  
produce Documents before ■ Arbitrator.

IN THE COURT OF SMALL CAUSES OF CALCUTTA.

*Before*  
ARBITRATOR APPOINTED BY THE COURT.

Suit No.      of 18      .

To

You are hereby required personally to be and appear before the said  
arbitrator at \_\_\_\_\_, on \_\_\_\_\_, the \_\_\_\_\_ day of  
at \_\_\_\_\_ o'clock in the forenoon, and so on, in like manner, on each day  
to which the arbitrator may adjourn the hearing until you shall have  
leave to depart to give evidence on behalf of the  
in a cause wherein \_\_\_\_\_ plaintiff and \_\_\_\_\_ defendant  
and take notice, that in case the arbitrator reports that you refuse or  
neglect, without sufficient cause, to appear before him on any such  
day and to produce (*Here insert the documents, if any, called for*)  
or refuse to give evidence, you will be liable to a fine, ■ the discretion  
of the said Court, not exceeding the sum of five hundred rupees, and  
to the consequences of non-attendance laid down in the Code of Civil  
Procedure.

Given under the seal of the Court this \_\_\_\_\_ day of  
One thousand eight hundred and eighty \_\_\_\_\_

*Serving Officer.*

*Clerk of the Court.*

No. 23.—Summons to Witness to appear and produce  
Documents before an Arbitrator.

IN THE COURT OF SMALL CAUSES OF CALCUTTA.

*Before*  
ARBITRATOR APPOINTED BY THE COURT.

Suit No.      of 18      .

To

You are hereby required personally to be and appear before the said  
arbitrator at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_



18 at o'clock in the forenoon, and so on, in like manner, on each day to which the case may be adjourned, until you shall have leave to depart, to give evidence on behalf of the  
in a cause wherein plaintiff and defendant,  
and cause to be produced

And take notice that, in case the arbitrator reports that you refuse or neglect, without sufficient cause, to appear before him and cause to be produced

or refuse to give evidence, you will be liable to a fine, at the discretion of the said Court, not exceeding the sum of five hundred rupees, and to the consequences of non-attendance laid down in the Code of Civil Procedure.

Given under the seal of the Court this                      day of  
One thousand eight hundred and eighty                      .  
*Serving Officer.*                      *Clerk of the Court.*

*Note.*—As you are required only to produce documents, and not to give evidence, you shall be deemed to have complied with the summons if you produce such documents to be produced before the arbitrator on the day and hour aforesaid.

**No. 24.—Execution against body of a Witness for disobeying a Summons to attend and give evidence or produce a Document.**

**IN THE COURT OF SMALL CAUSES OF CALCUTTA.**

Suit No.              of 188              .

**PLAINTIFF.**

*against*

**DEFENDANT.**

To

**BAILIFF OF THE COURT.**

**WHEREAS**                      having been served with a summons to attend this Court as a witness [or to attend and produce or cause to be produced the document mentioned in the said summons] in the above cause, on the              day of              last past, and the said              having neglected to attend [or to produce, or cause to be produced, &c.] at the time and place in the said summons mentioned, it              ordered by the Court              the              that he the said              should forfeit and pay the              of Rs.              And whereas the said              of Rs.              has not been paid pursuant to order, these are therefore to require and order you forthwith to take and convey the said              before the

said Court without delay after arrest, unless the said  
shall sooner perform the said order of the Court.

Given under the seal of the Court this                      day of  
188   ,

Fine	...	...	...	...
Execution fee	...	...	...	...

*Book*

*Page*

*R. No.*

Total Rs. ...

*Bailiff*

*Clerk of the Court.*

No. 25.—Warrant for the arrest of ■ Witness for refusing  
to give evidence.

IN THE COURT OF SMALL CAUSES OF CALCUTTA.

Suit No.              of 18   .

PLAINTIFF.

against

DEFENDANT.

To

BAILIFF OF THE COURT.

WHEREAS                      of  
having been served with a summons to attend this Court as a witness  
in the above cause, on the              day of              last past, and  
the said              having appeared in pursuance of  
the said summons did wilfully refuse to give evidence in the said suit,  
it ■ ordered by the Court on the              day of  
188   , that he the said  
should forfeit and pay the sum of Rs.              And whereas  
the said ■ of Rs.              has not been paid pursuant  
to order, these are therefore to require and order you forthwith to  
take and convey the said              before the said  
Court without delay after arrest, unless the said  
shall sooner perform the said order of the Court.

Given under the seal of the Court this                      day of              188   .

Fine	...	...	...	—
Execution fee	...	—	...	...

*Book*

*Page*

*R. No.*

Total Rs. ...

*Bailiff*

*Clerk of the Court.*

No. 28.—Warrant of Possession under Sec. 43 of the Act.

IN THE COURT OF SMALL CAUSES OF CALCUTTA.

Suit No.            of 188 .

PLAINTIFF,

against

DEFENDANT.

WHEREAS at a Court held on the            day of            18  
before            , it            ordered that the said plaintiff was  
entitled as against the said defendant to a warrant of possession of a  
certain            situate at            together with the costs  
of the suit, amounting to the sum of Rs.            ; this is to require  
and authorize you to give possession of the said            to  
the said plaintiff on or before the            day            188 ;  
and whereas the said sum of Rs.            has not been paid by the  
said defendant pursuant to the said order; this is also to require  
and order you to make and levy by attachment and sale of the  
moveable property of the said defendant, wheresoever they may be  
found within the jurisdiction of this Court (excepting the wearing  
apparel and bedding of the said defendant or his family, and the tools  
and implements of his trade if any), the said sum of Rs.            and  
also the costs of this execution, and also to (seize and take any  
money or bank notes (whether of the Bank of Bengal or of any  
other Bank), cheques, bills-of-exchange, promissory notes, bonds, or  
securities for money of the said defendant which may there be found,  
■ such part or ■ much thereof ■ may be sufficient for the satisfying  
of this execution and the costs of making and executing the same.

Given under the seal of the Court this            day of  
18 .

*Clerk of the Court.*

To

Head-Bailiff of the said Court, and the other Bailiffs thereof.

	Rs.	As.	P.
Costs            ...            ...            ...			
Execution ...            ...            ...			

*Book*

*Page*

*R. No.*

*Bailiff*

The            day of

18 .

No. 27.—Notice to show cause why Award should not be filed under Sec. 525 of the Code of Civil Procedure.

APPLICANT.

against

To

WHEREAS it has been made to appear to the Court that the parties abovenamed agreed to refer all matters in dispute between them in respect of \_\_\_\_\_ to the arbitration of \_\_\_\_\_; and whereas the said arbitrators made their award; and you \_\_\_\_\_ having failed to pay the said sum of Rs. \_\_\_\_\_ so awarded, this is to require you to appear before the Registrar of this Court on the \_\_\_\_\_ to show cause why the said award should not be filed and made absolute under the provisions of section 525 of the Civil Procedure Code.

Clerk of the Court.

## Appendix M.

### SCALE OF FEEDING CHARGES FOR LIVE STOCK ATTACHED IN EXECUTION OF DECREE.

Horses, at the rate of Rs. 25 *per mensem* for such number of days as they remain under attachment.

Cows, Bullocks and Donkeys, at 4 annas each *per diem*.

Goats and Sheep, at 2 " " "

Fowls of all descriptions, at 6 pies " "

## Appendix N.

### JURISDICTION UNDER ACT IV OF 1876 (B.C.)

S. 114. Appeals against any assessment made by the Commissioners under this chapter shall lie

\* \* \* \* \*

(b) to the Court of Small Causes.

In any case of an appeal to the Court of Small Causes under this section, the said Court may follow the procedure laid down in sections three hundred and fifty-four and three hundred and fifty-five.

## CHAPTER XVIII.

## OF THE RECOVERY OF DAMAGES AND EXPENSES.

S. 353. Where any damages, costs, or expenses are by this Act directed to be paid, the amount and, if necessary, the apportionment of the same, in case of dispute, shall be ascertained and determined by the Court of Small Causes.

Damages and expenses how to be determined.

Provided that, when any work is executed by the Commissioners under this Act in default of the owner or occupier of the house or land doing such work, the expenses thereby incurred may be recovered by the Commissioners as a rate under Chapter VI.

S. 354. In any case which is to be determined by the Court of Small Causes under this Act, the said Court may, on the application of either party, summon the other party to appear at a time and place to be named in such summons.

Method of proceeding before ■ Judge of ■ Court of Small Causes.

Upon the appearance of the parties, or, in the absence of any of them, upon proof of due service of the summons, the said Court may hear and determine such question, and, for that purpose, may examine such parties, or any of them, and their witnesses, on oath; and the costs of every such enquiry shall be in the discretion of the said Court, which shall determine the amount thereof.

S. 355. If the amount of damages, costs or expenses ascertained in the manner above described be not paid by the party liable to pay the same within seven days after demand, such amount may be recovered, under a warrant of the said Court, by distress and sale of the moveable property of such party; and the surplus arising from the sale thereof, after satisfying such amount and the costs of the distress and sale, shall be returned on demand to the party whose property shall have been distrained.

Recovery of damages by distress.

S. 356. Instead of proceeding by distress and sale, and in case of failure to realize by distress the whole or any part of any expenses, charges, or damages awarded under the provisions of this Act, the Commissioners may sue the person liable to pay the same in any Court of competent jurisdiction.

Commissioners may sue in any competent Court instead of realizing by, or on failure of, distress.

---

## Appendix C.

---

Bond and Warrant under Sec. 29 of the Act and Rule 55.  
IN THE COURT OF SMALL CAUSES OF CALCUTTA.

In the Suit of

*against*

PLAINTIFF.

DEFENDANT.

D D



Know all men by these presents that  
held and firmly bound to  
in the sum of Rupees

to be paid to the said  
heirs, executors,

administrators, or assigns, for which payment to be made  
bind heirs, executors, and administrators firmly by  
these presents.

The condition of this obligation is such that if the above bounden  
shall pay or cause

to be paid into the Court the sum of Rupees  
then this obligation shall be void and of no effect; or, on failure of the  
payment of any one instalment as aforesaid on the due date, it shall be  
and remain in full force and effect.

Dated this                      day of                      in the year 188 .

*Signed at Calcutta, in the presence* }  
*of*

*Book*  
*Page*

*Clerk of the Court.*

*Note.*—For stamp required ■ Appendix II, 408.

### Warrant to Confess Judgment.

In the Suit of

PLAINTIFF.

*against*

DEFENDANT.

To

THE HEAD BAILIFF OF THE COURT OF SMALL CAUSE OF CALCUTTA.

These are to desire and authorize you to appear for

in the said Court at any time subsequent to the date  
of this warrant, and then and there in a suit for Rupees  
on ■ bond or obligation made and entered into by the said

to

in the

■ of Rupees

payable

and on failure of any ■ instalment the whole to become due at the  
suit of the said

heirs, executors, or administrators, to confess the same suit, or else to  
suffer ■ judgment to pass against                      in the said

suit, and to be thereupon forthwith entered up against  
of record in the said Court for the said sum of Rupees

**WARRANT TO CONFESS JUDGMENT. 435**

besides costs of suit. In witness thereof have hereto set  
hand this day of 188 .

Signed at Calcutta in the presence of me - }

I having informed the said

of the nature and effect of the above warrant  
before the same was executed, and I subscribe  
my name as a witness to the due execution  
hereof. }

*Book*

*Page*

*Clerk of the Court.*



# INDEX.

—:0:—

## -ABANDONMENT—See *Relinquishment*.

of claim by plaintiff without permission, (C. 373), 19, 256.  
of suit or proceeding by minor plaintiff or party, (C. 450—2),  
272-73.

## ABATEMENT—

no, of suit by party's death, if cause of action survive, (C. 361),  
61, 251.  
where no application by representative of deceased plaintiff,  
(C. 366), 252.  
no, by marriage of female party, (C. 369), 61, 254.  
no, by plaintiff's bankruptcy or insolvency if assignee or receiver  
continues suit, (C. 370), 61, 255.

ACCOUNT, meaning of balance of, 88.

## ACCOUNTS—

of costs and proceeds upon distresses, (A. 67), 137.  
of money paid into and out of Court, to be kept, (A. 90), 152.  
commission to examine or adjust, (C. 394), 262.  
reference of disputed, to Court Accountant, 34.

## ACT—

definition of, in rules of practice, (R. 1), 308.  
XXIII of 1850, for securing the land-revenue of Calcutta,  
(A. 3), 75-76.  
VII of 1870, Court Fees Act, (A. 77), 144-45, 380—82.  
IV of 1876 (B. C.), jurisdiction under, 70-71.  
procedure under, in appeals and claims, (R. 54),  
320, 432.  
Army Act, 1881, (A. 1), 73-4.  
XIV of 1882, (the Code of Civil Procedure, ■ extended to the  
Small Cause Court of Calcutta), 162—307.  
XV of 1882 (The Presidency Small Cause Courts Act, 1882),  
73—161.

## ACTS—

amendment of, (A. 3), 75-6.  
references in previous, (A. 2), 74-5.  
Schedule of, repealed, (A. 2, sch. i), 74-5, 155.

## ADDITION—See *Parties*.

of plaintiff as ■ party, (C. 27), 17, 180.

**ADJOURNMENT—**

- costs of, where summons not served in time, (C. 100), 34, 200.
- where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance, (C. 101), 34, 200-1.
- power of Court to grant, for sufficient cause, (C. 156), 34, 210.
- costs of, in the discretion of the Court, (C. 156), 34, 210-11.
- on failure of parties to appear, (C. 157), 34, 211.
- of sale in execution of decree, (A. 30), 105.
- of sale of property distrained for rent, (A. 60, 61), 60, 132-34.
- of sale of property when decree contingent on opinion of High Court, (C. 618), 300-1.

**ADJUSTMENT—**

- modes of paying money in, of decree, (C. 257), 44, 230.
- out of Court, (C. 258), 45, 231.
- by payment or otherwise to be reported to the Court, (C. 258), 45, 231.
- no payment or, recognized unless certified to the Court, (C. 258), 45, 231.

**ADMINISTRATORS—**

- suits by and against trustees, executors and —, chapter on, 65, 270.
- ordinary decree against, (R. 35), 315.
- Court may direct personal execution against, for misapplying property or improperly withholding payment of decree, (R. 36), 315.
- Court may pass a decree against, in person, for raising vexatious or groundless defence, (R. 37), 316.
- right of suit vests in, when, (C. 361), 61, 251.
- joinder of, (C. 438), 65, 270.

**ADMISSION—**

- of suits by poor persons without payment or on part-payment of fees, (A. 74), 6, 143.
- of plaintiff's claim by defendant, (C. 152), 25, 210.
- by one of several defendants, (C. 153), *ib.*

**ADVOCATE—See Barrister and Judges.**

- certificate by, in application for rehearing in High Court, (R. 38), 56, 114-15.
- for new trial, (R. 46), 52, 318.
- not required to produce authority in writing, 17.
- fees of, (Apx. G.), 405-7.
- in references before High Court, (Apx. D. 6), 380.

**AFFIDAVIT—**

- in support of an application for rehearing of a suit in High Court, (A. 38), 56, 114-15.
- in support of an application for a distress warrant, (A. 53), 59, 128.
- form of, in application for a distress, (A. 3, sch. i), 158.
- power to order any point to be proved by, (C. 194), 35, 218.
- power to order attendance of declarant of, for cross-examination, (C. 195), 35, 218.
- matters which may be proved by, (C. 196), 218.
- costs of improper, (C. 196), *ib.*
- oath of declarant of, by whom to be administered, (C. 197), 219.



**AFFIDAVIT—(continued).**

- in support of application for appointment of new next friend, (C. 447), 272.
- proving majority of late minor, (C. 453), 273.
- in support of application for appointment of guardian *ad litem*, (C. 456), 274.
- admission of, as evidence, (C. 647), 304.

**AGENT—**

- of landlord duly constituted, may apply for distress warrant, (A. 53), 128.
- of applicant, to discharge or suspend distress warrant, (A. 60), 132-33.
- who is ■ recognized, (C. 37), 16, 183-84.
- powers of ■ recognized, (C. 36), 183.
- service of process on a recognized, (C. 38), 17, 184, 310.
- who may be an, to accept service of process, (C. 41), 184-85.
- appointment of, how made, (C. 41), *ib.*
- when service may be made upon an, (C. 75), 193, 312.
- who may be an, for service of summons, (C. 76-77), 194, 312.
- of Government, in suit, (C. 417), 264.
- to receive process, (C. 419), 265.
- of foreign State, (C. 432), 268.
- of military men, (C. 465), 276-77.
- how appointed, (C. 465), 276.
- powers of, (C. 466), 277.
- service on, (C. 467), *ib.*
- when interpleader-suit may be instituted by, (C. 474), 279.
- when exempted from arrest, (C. 642), 303.

**AGREEMENT—**

- proceedings on, of parties, chapter on, 69, 295.
- Court may by, of parties try suits exceeding pecuniary limits, (A. 20), 94-5.
- decision upon, (A. 20), 94.
- issues by, (C. 150), 36, 209.
- judgment upon, (C. 151), 36, 209-10.
- to refer to arbitration, (C. 523), 293.
- may be filed in Court, *ib.*
- application to be numbered and registered, *ib.*
- notice to show cause against filing, (C. 523), 294.
- further provisions relating to award, (C. 524-26), 294-95.
- proceedings on, of parties, (C. 527), 295.
- when value of subject-matter must be stated, (C. 528), 296.
- procedure on, being filed, (C. 529-31), 296-97.

**ALIENATION** of attached property void, (C. 276), 47, 238.

**ALIENS—**

- suits by, and by or against foreign and native rulers, chapter on, 64, 267.
- when, may sue, (C. 430), 64, 267-68.

**AMENDMENT—See *Parties*.**

- of Acts, (A. 3), 75-76.
- of causes of action, (C. 47), 4, 187.

**AMENDMENT—(continued).**

- of plaint, (C. 53), 30-31, 190.
- attestation of, (C. 53), 31, 190.
- of written statement, (C. 116), 205.

**AMENDS**, tender of, in suit for anything done under Act, (A. 96), 96, 154.

**APPEAL—See *New Trial, Re-hearing, and Reference to High Court.***

- no, from judgment of Small Cause Court, (A. 37), 51, 109-10.
- no, from judgment of High Court on re-hearing, (A. 39), 116.
- in convictions for contempt of Court, (A. 88), 151.
- from assessment under Act IV (B. C.), 70, 71.
- under sec. 353 of Act IV (B. C.), 70-71.

**APPEARANCE—**

- of parties, chapter on, 16, 180.
- of pleader, with parties or recognized agents, (R. 9), 17, 310.
- each of several plaintiffs or defendants may authorize any other to make, (C. 35), 183.
- by whom, may be entered, (C. 36), 17, 183.
- in person may be required by Court, (C. 36), 183.
- summons for, (C. 64), 8, 191-92.
- of defendant, day for, to be fixed, (C. 69), 8, 9, 192, 311-12.
- where substituted service, time for, to be fixed, (C. 84), 10, 195.
- of parties, on day fixed in summons, (C. 96), 16, 199.
- suit to be dismissed for non-appearance of both parties, unless Judge otherwise directs, (C. 98), 21, 199.
- plaintiff in such case may bring fresh suit, (C. 99), 22, 199, 200.
- consequence of defendant's non-appearance when summons duly served, (C. 100), 23, 200.
- when summons not duly served, [C. 100 (b)], 22, 23, 200.
- when summons served but not in due time, [C. 100 (c)], 23, 200.
- consequence of plaintiff's non-appearance where defendant appears, (C. 102), 23, 201.
- decree against plaintiff in default of, bars fresh suit, (C. 103), *ib.*
- procedure in case of non-appearance of defendant residing out of British India, (C. 104), 23, 201-2.
- procedure in case of non-appearance of one or more of several plaintiffs, (C. 105), 24, 202.
- procedure in case of non-appearance of one or more of several defendants, (C. 106), *ib.*
- consequence of non-appearance of party ordered to attend in person, (C. 107), *ib.*
- of parties, failure of, at adjourned hearing, (C. 157-8), 34, 211.
- of witnesses, to give evidence or produce document, (C. 172), 14, 214.
- when witnesses may cease to appear, (C. 173), 15, 214.
- consequence of non-appearance of witnesses, (C. 174), *ib.*
- security for, of witnesses, (C. 174), *ib.*
- affidavits of witnesses exempted from personal, (C. 194), 35, 218.
- power of Court to order, of witness for cross-examination, (C. 195), *ib.*
- of witnesses before commissioner, (C. 399), 28, 263.
- of parties before commissioner, (C. 400), 264.

## APPEARANCE—(continued).

- of persons authorized to act for Government, (C. 417), 264.
- by Secretary of State, (C. 420), 265.
- exemption of public officers from personal, (C. 428), 63, 267.
- when defendant may be ordered to give security for, (C. 478), 282.
- of defendant, in summary suit upon negotiable instrument, (C. 532), 69, 297-98.
- exemption of certain women from personal, in Court, (C. 640), 302.
- of certain persons of rank from personal, in Court, (C. 641), *ib.*

## APPENDIX A to O, 322—435.

## APPLICATION—

- every, for executing a decree or for the ordinary process of the Court to be on a form provided for the purpose, (R. 22), 313.
- contents of applications generally, (R. 38), 316.
- to be signed and verified, (R. 38), *ib.*
- to be made ordinarily to the Bench before which case is pending, (R. 38), *ib.*
- in making, applicant to be prepared with necessary evidence in support of, (R. 39), *ib.*
- day for hearing, to be fixed, (R. 40), *ib.*
- when, to be in duplicate and served, (R. 41), 316-17.
- what applications to be in writing, (R. 42), 317.
- for leave to file a suit, when defendant non-resident, (A. 18), 5, 82-91, 316-17.
- when defendant *temporarily* residing within local limits, (A. 18), *ib.*
- where defendant is a corporation or company, (A. 18), *ib.*
- to be in writing, (R. 42), 6, 317.
- contents of, (R. 38, 42-43), *ib.*
- for new trial, under section 37 of the Act, (A. 37), 51-53, 109-14.
- time within which, to be made, (A. 37), 52, 109-10.
- to be in duplicate, (R. 44), 52, 317.
- copy of, to be served on opposite party, (R. 44), *ib.*
- time and manner of service, (R. 44), *ib.*
- grounds of, to be fully and distinctly set out, (R. 45), 52, 318.
- certificate of advocate or pleader in support of, (R. 46), *ib.*
- amount of decree (if any) to be deposited, (R. 47), *ib.*
- Court may in certain cases dispense with deposit, (R. 47), *ib.*
- security in lieu of payment, (R. 47), *ib.*
- Court hearing, how constituted, (R. 48), *ib.*
- under section 99 of the Code, to set aside an order of dismissal, (R. 38, 42, 44-5), 22, 316-18.
- time within which, to be made, (C. 99), 22, 199, 200.
- to be in duplicate and copy served on opposite party, (R. 44), 317.
- grounds of, to be set forth, (R. 45), 318.
- costs (if any) to be deposited, (R. 47), *ib.*
- by what Court to be heard, (R. 38), 316.
- to set aside *ex parte* decree against a defendant, (C. 108), 24, 202-3.
- time within which, to be made, (C. 108 note), *ib.*

APPLICATION — (*continued*).

- to set aside *ex parte* decree to be in duplicate and copy served on opposite party, (R. 44), 317.
- grounds of, to be set forth, (R. 45), 318.
- amount of decree to be deposited if not dispensed with by Court, (R. 47), *ib.*
- by what Court to be heard, (R. 38), 316.
- for re-hearing in High Court, (A. 38), 55-56, 114-15.
- in what cases allowed, (A. 38), *ib.*
- to be supported by affidavits, (A. 38), *ib.*
  - by certificate of leading practitioner at original trial, (A. 38), *ib.*
- procedure in, (A. 39), 56, 115-16.
- no appeal from judgment in, (A. 39), 116.
- costs in, (A. 71), 56, 141.
- for recovery of possession of immoveable property, (A. 41), 57, 116-21.
  - form of, (R. 53), 319-20.
  - annual value to be stated in plaint, (R. 53), 319.
- for distress-warrant, (A. 53), 58, 128-29.
  - form of affidavit in support of, (A., 3rd sched.), 59, 158.
  - to discharge or suspend warrant, (A. 60), 60, 132-33.
  - by claimant to goods distrained, (A. 61), 60, 133-34.
  - to proceed by plaint, (R. 49), 60, 319.
  - particulars to be contained in, (R. 50), 319.
  - sale to be postponed and money detained pending result of, (R. 51), *ib.*
  - to transfer certain cases to High Court, (A. 63), 60, 135-36.
  - time within which, to be made, (A. 63), *ib.*
  - procedure in, before High Court, (A. 63), *ib.*
  - of sale-proceeds, (A. 65), 60, 136-37.
- for reference to High Court, (A. 69, C. 617), 54, 138-40, 300.
  - in what cases allowed, (A. 69, C. 617), *ib.*
  - statement of facts to be drawn up, (A. 69, C. 617), *ib.*
  - security when to be furnished, (A. 70), 54, 140-41.
  - consequence of not furnishing security, (A. 70), *ib.*
- of poor persons to file suits free of costs, (A. 74), 6, 143.
- to stay proceedings when all defendants do not reside within jurisdiction, (C. 20), 178-79.
- to Court, to send for its own records or of other Courts, (C. 137), 32, 207.
- to give evidence by affidavit, (C. 195), 35, 218.
- for instalments, (C. 210), 25-26, 220.
  - how payable, (R. 34), 315.
- under the Code, costs of any, (C. 218), 221.
- for execution of decree, (C. 230), 39-40, 224.
  - by joint decree-holder, (C. 231), 40, 224.
  - by transferee of decree, (C. 232), 41, 225.
- against representative of ■ deceased judgment-debtor, (C. 234), *ib.*
- under Chapter XXI of the Code, to be in writing, (R. 42), 317.
- on behalf of a minor, by whom to be made, (C. 441), 66, 271.
- for removal of next friend, (C. 446), 66, 272.
- for appointment of new next friend, to be supported by affidavit, (C. 447), 272.

APPLICATION—(*continued*).

- for appointment of new next friend when pleader omits to get one appointed, (C. 449), 272.
- by minor plaintiff or minor party ■ coming of age, (C. 450), *ib.*
- to proceed with suit by minor on majority, (C. 451), 273.
- to dismiss suit instituted on behalf of ■ minor, (C. 452), *ib.*
- under sections 451 and 452 how made and proved, (C. 453), *ib.*
- costs of, (C. 454), *ib.*
- for appointment of a guardian *ad litem*, (C. 456), 66, 274.
- for taking security from ■ defendant before judgment, (C. 477—82), 281—83.
- for attachment of moveable property before judgment, (C. 483—86), 283—85.
- when, may be made for personal execution against a representative, (R. 36), 315.
- when, may be made for a personal decree against an executor, administrator or legal representative, (R. 37), 316.
- for order of reference to arbitration, (C. 506), 27, 288.
- for Court to appoint umpire, (C. 511), 28, 290.
- for extension of time for making award, (C. 514), 27, 291.
- to set aside award, (C. 521), 29, 292.
- within what time to be made, 29.
- to file agreement to refer to arbitration, (C. 523), 293.
- under section 114 of Act IV (B. C.), 70-71.
- under section 353 of Act IV (B. C.), *ib.*

## APPOINTMENT—

- of Judges, (A. 7), 77.
- of Registrar, (A. 13), 80.
- of bailiffs and ministerial officers, (A. 13), *ib.*
- of appraisers, (A. 51), 127-28.
- of advocate, need not be in writing, 17.
- of pleader, 17, 310.
- of agent to accept service of process, (C. 41), 184-85.
- of commissioners, (C. 383), 62, 259.
- of persons to prosecute or defend for foreign princes, (C. 432), 64, 268.
- of new next friend, (C. 449), 272.
- of guardian *ad litem*, (C. 456), 66, 274.
- of arbitrator, (C. 506), 27, 288.
- of umpire, (C. 509, 511), 28, 289-90.

APPRAISEMENT of property distrained for rent, (A. 64), 136.

APPRAISERS—See *Bailiffs and Officers of Court*.

appointment of, (A. 51), 127-28.

## ARBITRATION—

- reference to, (C. 506), 27, 288.
- nomination of arbitrator how made, (C. 507), *ib.*
- order of reference to, (C. 508), 27, 289.
- to provide for difference of opinion, (C. 509), 28, 289.
- death, incapacity, &c., of arbitrators or umpire, (C. 510), *ib.*
- appointment of umpire by Court, (C. 511), 28, 290.
- powers of arbitrators or umpire, (C. 512), *ib.*



**ARBITRATION—(continued).**

- summoning of witnesses, (C. 513), 28, 290.
- punishment for default, &c., (C. 513), *ib.*
- extension of time for making award, (C. 514), 27, 291.
- supersession of, (C. 514), *ib.*
- when umpire may arbitrate in lieu of arbitrators, (C. 515), 291.
- award to be signed and filed, (C. 516), 29, 291.
- arbitrators or umpire may state special case for Court's opinion, (C. 517), 291.
- when Court may modify or correct award, (C. 518), 29, 291-92.
- costs of, (C. 519), 29, 292.
- when award or matter referred to, may be remitted, (C. 520), 29, 292.
- grounds for setting aside award, (C. 521), *ib.*
- when application to be made, 29.
- judgment and decree to be according to award, (C. 522), 29, 293.
- when agreement to refer to, may be filed in Court, (C. 523), 293.
- notice to show cause against filing, (C. 523), 294.
- when award made without intervention of Court may be filed, (C. 525), *ib.*
- notice to parties to arbitration, (C. 525), *ib.*
- when award may be filed and enforced, (C. 526), 295.
- no appeal or new trial from an award, 29.
- arbitrator cannot delegate authority or appoint others, 28.

**ARREST—See *Execution of Decree.***

- persons exempted from, (A. 93), 153-54.
- exemption of public officers from, before judgment, (C. 427), 266.
- Judges and Magistrates when exempted from, (C. 642), 303.
- parties to suit, pleaders, agents and witnesses when exempted from, (C. 642), *ib.*
- of defaulting witness, (C. 174), 15, 215.
- of judgment-debtor in execution of decree, (C. 336), 50, 246-48.
- time and manner of, (C. 336), *ib.*
- release from, on payment of decree and costs to officer, (C. 336), *ib.*
- of judgment-debtor, warrant for, (C. 337), 248.
- subsistence-money to be first deposited in Court, (C. 339), 50, 248-49.
- scale of subsistence-money, (Apx. J.), 410-11.
- when judgment-debtor shall be released from, (C. 341), 51, 249-50.
- effect of discharge from, under sec. 341, 51, 250.
- period of imprisonment after, (C. 342), 250.
- endorsement on warrant of, (C. 343), *ib.*
- person issuing warrant of, to accompany officer, (A. 27), 44, 102, 312.
- discharge of judgment-debtor — giving security, (A. 29), 48, 104-5.
- in certain other cases, (A. 30), 105.
- execution of warrant of, in cantonments, (C. 469), 277, 278.
- before judgment, (C. 478), 282.
- application for, to be in writing, (R. 42), 317.
- when plaintiff may apply for, (C. 477), 281-82.
- subsistence-money of defendant under, (C. 482), 50, 283.
- compensation for improper, (C. 491), 286.
- women exempted from personal appearance in Court not exempted from, in execution of decree, (C. 640), 302.

**ARREST—(continued):**

of person beyond the jurisdiction of the Court, (C. 648), 305.

form of warrant of, in execution, (Apx. L. 9), 417-18.

ASSETS—

representative of deceased judgment-debtor to account for, (C. 234), 225-26.

decree against representative of ■ deceased party to be paid out of  
deceased's, (C. 252), 229.

representative liable on failure to duly account for, of deceased,  
(C. 252), *ib.*

for misapplying, or improperly withholding  
payment out of, (R. 36), 315.

ASSIGNEE—

execution of decree on application of, (C. 232), 225.

rights of, (C. 233), *ib.*

procedure where, fails to continue suit or give security, (C. 370),  
255.

of suit, *pendente lite*, (C. 372), *ib.*

### ASSIGNMENT -

of decree to be in writing, (C. 232), 225.

notice of, to be given before execution, (C. 232), *ib.*

where, to one of several defendants, no execution against the others, (C. 232), *ib.*

procedure in cases of, *pendente lite* (C. 372), 255.

**ATTACHED PROPERTY**—See *Execution of Decree*.

private alienation of, void, (C 276), 47, 238.

Investigation of claims and objections to, (C. 278), 49, 238-39.

power to order sale of, and payment of sale-proceeds, (C. 284), 240

**ATTACHMENT BEFORE JUDGMENT—**

application for, (C. 483), 283-84.

conditional, pending determination of application, (C. 484), *ib.*

on failure to furnish security or show cause, (C. 484), 284.

prior rights of strangers not affected by, (C. 489), 285.

when cause not shown or security not furnished, (C. 485), 285.

mode of making, (C. 485), *ib.*

investigation of claims to property under, (C. 487), *ib.*

removal of, when security furnished or suit dismissed, (C. 488), *ib.*

not to bar decree-holder from applying for sale, (C. 489), *ib.*

re-attachment on decree unnecessary, (C. 490), 286.

compensation for obtaining, ■ insufficient grounds, (C. 491), *ib.*

**ATTACHMENT IN EXECUTION**—See *Execution of Decree*.

**ATTENDANCE**—See *Appearance*.

of parties to a suit, (C. 36), 17, 183.

witnesses, (C. 159), 12, 211, 212.

expenses of, (C. 160—62, R. 29—32), 13, 212-13, 314-15.

at Court, at time named, (C. 163), 213.

how enforced, (C. 174), 15, 215.

personal, (C. 176), 15, 215-16.

before commissioner, (C. 399), 63, 263-64.

of person able to answer questions relating to suit against Govt.,  
(C. 421), 265.

persons exempted from, (C. 640-41), 302.

**ATTESTATION—**

- of amendment of plaint, (C. 53), 31, 190.
- of verification of plaint, (C. 52), 4, 5, 190.
- of written statement, (C. 115), 35, 205.

**ATTORNEY—**

- appearance by, (R. 9), 17, 310.
- service of process on, (R. 10), 310.
- certificate by, when necessary, (A. 38, R. 46<sup>v</sup>, 52, 56, 114, 318.
- when entitled to take copies of documents and papers, (Apx. A. 11), 323.
- when power in favor of, may be filed, (Apx. A. 13), *ib*.
- may serve certain processes, (A. 89), 152.
- fees of, (Apx. G.), 144, 405-7.
- in references before High Court, (Apx. D. 7), 380.

**AUCTION—**

- sales in execution to be made by public, (C. 286), 49, 240.
- notice of sales by, (C. 286), *ib*.
- appraisement before sale by, in distrainments for rent, (A. 64), 136.
- notice of sale by, (A. 64), *ib*.
- sale of distrained property by, (A. 65), 60, 136-37.

**AUTHORIZED AGENT—See Agent.****AWARD—See Arbitration.****BAIL—**

- for appearance of witnesses, (C. 174), 15, 215.
- form of, Bond, (Apx. L. 21), 427-28.

**BAILIFFS—See Officers of Court.**

- appointment and removal of, (A. 13), 80.
- suits by and against, (A. 21), 95-6.
- default of, in execution of order or warrant, (A. 79<sup>v</sup>, 146.
- appointment and remuneration of distrainment, (A. 51<sup>v</sup>, 127-28.
- security to be given by, (A. 52<sup>v</sup>, 128.
- duties of, (A. 56-59, 61, 64, 65), 130-32-33-34, 136-37.
- payment of money into Court by, (R. 6, Apx. A. 28), 310-325.

**BANKRUPTCY of plaintiff when bar to a suit, (C. 370), 61, 255.****BARRISTER—See Advocate and Judges.**

Judges, (A. 7), 77.

**BEGIN—**

- rules as to right to, (C. 179), 31, 216-17.
- party having right to, to state case and produce his evidence, (C. 179), 216.
- other party to state case and produce his evidence, (C. 180), 217.
- rule as to reply, (C. 180), 31, 217.

**BILL OF EXCHANGE—**

- joinder of parties to, (C. 29), 17, 181.
- suit on lost, (C. 61), 191.
- indemnity-bond on lost, (Apx. L. 20), 426-27.
- summary suit and procedure upon, (C. 532-38), 69, 70, 297-300.

**BOMBAY—**

- Act applicable to, (A. 5), 76.
- enactments relating to, repealed, (A. 2, sch. i), 74-5, 155.

**BONA FIDE**, meaning of, in considering liability of officers of Court, 96.

**BOND—**

security, for stay of proceedings under sec. 47 of the Act, (Apx. L. 17), 424.

on reference to High Court, under sec. 70 of the Act, (Apx. L. 19), 425-26.

indemnity, on lost negotiable instrument, (C. 61, Apx. L. 20), 426-27.

bail, by a witness, (C. 174, Apx. L. 21), 427-28.

security, and warrant, under sec. 29 of the Act and rule 55, (Apx. O.), 433-35.

**BOOKS—See Documents.**

registers and account, to be prescribed by High Court and approved by Government, (A. 90), 152.

Court to furnish, &c., to High Court and Local Government, when required, (A. 91), 152-53.

**BRITISH INDIA—**

procedure where defendant residing out of, does not appear, (C. 104), 201-2.

security for costs when plaintiff residing out of, (C. 380), 62, 258.

what may be deemed residence out of, (C. 382), 258.

**BURDEN OF PROOF—**

on applicant, for order of possession under sec. 43 of the Act, 122.

on claimant, to attached property, (C. 279), 239.

**BUSINESS—**

meaning of "carrying on," (A. 18), 87.

persons carrying on, for non-resident parties, are recognized agents, (C. 37), 16, 183-84.

**CALCUTTA—**

definition of Court of Small Causes of, (A. 4), 76.

establishment of Court of Small Causes of, (A. 5), *ib.*

amendment of Acts relating to, (A. 3), 75-76.

local limits of, (A. 17, Apx. B), 82, 327-29.

practice of Court of Small Causes of, 1-72.

Small Cause Court Act, 73-161.

Code of Civil Procedure applied in, 162-307.

Rules of Practice of, 308-21.

Appendix of rules and forms applicable in, 322-435.

**CANTONMENTS**, execution of warrant of arrest in, (C. 469), 277-78.

**CASE—**

statement of, for opinion of Court, (C. 527), 69, 295.

when value of subject-matter must be stated in, (C. 528), 69, 296.

procedure, hearing, and disposal of, (C. 529-31), 69, 296-97.

power of Registrar to state, (C. 646, R. 3), 304, 309.

**CAUSE OF ACTION—**

when Court to have jurisdiction over, (A. 18), 82-91.

decisions relating to, *ib.*

what is a sufficient, to create jurisdiction, 85.

whole claim arising out of same, must be included in suit, (C. 43), 3, 185-86.

CAUSE OF ACTION—(*continued*).

- effect of omission to include whole or relinquishment of part, 3, 185-86.
- plaintiff may join several, (C. 45), 186-87.
- Court may order separation, *ib.*
- amendment of, (C. 47, 53), 30-31, 187, 190.
- rejection of plaint for not disclosing, (C. 53), 30-1, 190.
- surviving, death of party not to cause suit to abate, (C. 361), 251.
- common forms of, (Apx. C), 330-36.
- when more defendants than one, copy of, to be served with summons, (R. 13), 8, 311.

## CERTIFICATE—

- of advocate, attorney or pleader in support of re-hearing in High Court, (A. 38), 56, 114-15.
- in support of application for new trial, (R. 46), 52, 318.
- of part or non-satisfaction of decree for transmission to another Court, 106.
- form of, (Apx. L. 12), 420-21.
- for fees of legal practitioners, (Apx. G), 405-7.

## CERTIFIED COPIES—

- of proceedings, (C. 217, Apx. A. 12), 39, 221, 323.
- of decree, form of, (Apx. L. 12), 420-21.

## CHIEF JUDGE—

- appointment, suspension, and removal of, (A. 7), 77.
- must be a barrister-at-law or advocate of a High Court, *ib.*
- to be first in rank and precedence of the Judges, (A. 8), 78.
- to distribute business of the Court, (A. 10), 78-79.
- when to have casting voice, (A. 11), 79.
- may appoint clerks, bailiffs, and ministerial officers, (A. 13), 80.
- powers of, with reference to suspension and removal of registrar and officers of Court, *ib.*
- not to practise or trade, (A. 15), 81.
- to hear applications for new trial under sec. 37, (R. 48), 53, 318.

## CIVIL PROCEDURE CODE—

- extension of, to Presidency Small Cause Courts, (A. 23), 97-98.
- notification of portions extended, omitted, and modified in Calcutta, 162-70.
- as applicable in Calcutta, 156-58, 171-307.

## CLAIM—

- relinquishment of part of, (C. 43, 373), 3, 185, 256.
- effect of relinquishment or abandonment of part of, *ib.*
- by or against executors, administrators or heirs, [C. 44 (b)], 3, 186.
- cross-claims under same decree, (C. 247), 43, 227-28.
- to attached property, investigation of, (C. 278-82), 49, 238-40.
- payment of money into Court in satisfaction of, (C. 376), 26, 256-57.
- to property attached before judgment, investigation of, (C. 487), 285.
- compensation in case of, under sec. 278 of the Code, (A. 26), 101-2.
- to goods distrained, (A. 61), 60, 133-34.
- compensation in case of, under secs. 60 or 61 of the Act, (A. 62), 60, 134-35.
- procedure to be observed in filing, under secs. 278 or 487 of the Code or sec. 61 of the Act, (R. 49, 50), 319.



**CLERK OF THE COURT**—See *Officers of the Court*.

- appointment, suspension and removal of, (A. 13), 80.
- powers and duties of, under direction of Chief Judge, *ib.*
- may perform all ministerial duties of registrar, (R. 4), 309.
- office hours of, (R. 8), 310.
- applications for execution of decree and ordinary processes to be made to, (R. 22), 313.
- summons for production of court records to be served on, (R. 24), *ib.*

**CODE**—

- portions of Civil Procedure, extending to Small Cause Court of Calcutta, (A. 23), 97-98, 156-58, 171-307.
- extended by Code itself, (C. 8), 175-76.

**CO-DEFENDANT**—

- may defend on behalf of others in same interest, (C. 30), 18, 181.
- may be guardian *ad litem*, (C. 457), 274.

COIN or Currency Notes attached, may be paid to party, (C. 277), 238.

COLLECTION of land-revenue, suits for, excluded, (A. 19), 91.

COLLECTOR of Calcutta, powers of, for securing land-revenue, (A. 3), 75-6.

**COMMENCEMENT**—

- of Act, (A. 1), 73-74.
- of Code, (C. 1), 171.

**COMMISSION**—

- to examine witnesses, for local investigations and to examine accounts, chapter on, 62, 259-64.
- when Court may issue, to examine witness, (C. 383), 62, 259.
- when order for, may be made, (C. 384), 259.
- when witness resident within local limits, (C. 385), *ib.*
  - beyond local limits, (C. 386), 259-60.
  - out of British India, (C. 387), 260.
- Court receiving, how to proceed, (C. 388), *ib.*
- return of, when executed, (C. 389), *ib.*
- evidence taken on, when to be read, (C. 390), 260-61.
- issued by foreign Court, (C. 391), 261.
- expenses of, (C. 218, 397), 62, 221, 263.
- costs of, by persons claiming exemption from personal appearance, (C. 641), 302.
- form of, (Apx. L. 14), 422.
- for local investigations, (C. 392), 62, 261.
- procedure of commissioner, (C. 393), 262.
- to examine or adjust accounts, (C. 394), 62, 262.

**COMMISSIONER**—

- instructions to be given to, and proceedings of commissioner, (C. 395), 262.
- powers of commissioner, (C. 398), 63, 263.
- punishment of witnesses before commissioner, (C. 399), *ib.*
- ex parte* proceedings before commissioner, (C. 400), 63, 264.

COMMITMENT—See *Execution of Decree and Contempt of Court*.

**COMPANY—**

- suits by and against corporations and, chapter on, 64, 269.
- where deemed to carry — business, (A. 18), 83, 86, 90.
- when leave to sue, necessary, *ib.*
- rules as to sale of shares in, in execution, (C. 296), 47, 243.
- delivery of shares in, sold in execution, (C. 301), 47, 244.
- transfer of shares in, after sale in execution, (C. 302), 47, 245.
- suits by and against, (C. 435), 269.
- subscription and verification of plaint by, *ib.*
- service of summons on, (C. 436), *ib.*

**COMPENSATION—**

- by plaintiff to defendant for trouble and attendance, (A. 26), 101-2.
- by claimant or objector under sec. 278 of the Code, to decree-holder, *ib.*
- by decree-holder to claimant or objector, *ib.*
- effect of order awarding or refusing, *ib.*
- enforcement of order for, *ib.*
- to applicant or claimant to goods distrained, (A. 62), 60, 134-35.
- effect of order awarding or refusing, *ib.*
- to decree-holder by bailiff or officer for default in execution of warrant, (A. 79), 146.
- enforcement of order, (A. 82), 147.
- for irregularity in sale of moveable property, (C. 298), 244.
- for improper arrest or attachment before judgment, (C. 491), 286, amount Court may award as, *ib.*
- effect of order for, *ib.*

**COMPROMISE—**

- of suits, chapter on, 18.
- between parties before hearing, (A. 73), 18, 142-43.
- repayment of half fees, *ib.*
- meaning of the "hearing," 18.
- how reported, (R. 33), 18, 315.
- attendance of defendant, 19.
- or adjustment of decree, out of Court, to be certified by decree-holder, (C. 258), 45, 231.
- judgment-debtor may apply for order directing decree-holder to certify, *ib.*
- of suits, (C. 375), 19, 256.
- by next friend or guardian *ad litem*, only with leave of Court, (C. 462), 275.

**CONCEALMENT** of property, procedure in case of fraudulent, (C. 643), 303.

**CONCISE STATEMENTS—**

- when to be used, (R. 13), 8, 311.
- to accompany summons to defendant, *ib.*
- forms of, (Apx. C.), 374-79.

**CONCURRENT JURISDICTION—**

- of the High Court, (A. 21), 95-96.
- costs when plaintiff — in High Court in cases cognizable by Small Cause Court, (A. 22), 97.

**CONJUGAL RIGHTS**, suits for restitution of, barred, (A. 19), 92.

**CONTEMPT OF COURT—**

- procedure in certain cases of, (A. 83), 147-48.
- offences constituting, 148.
- record in such cases, (A. 84), *ib.*
- procedure where Court considers ■■■ should be dealt with by ■ Magistrate, (A. 85), 149-50.
- discharge of offender on submission or apology, (A. 86), 150.
- imprisonment or committal of person refusing to answer or produce document, (A. 87), 150-51.
- appeals from orders under secs. 83, 87, (A. 88), 151.

**CONTRACT—See Cause of Action.—**

- joinder of parties liable on same, (C. 29), 181.
- suit on, not to abate by death of one joint contractor if cause of action survive, (C. 361), 251.
- forms of plaint for breach of, (Apx. C.), 330-79.

**CONVERSION** of moveable property, form of plaint for, (Apx. C.), *ib.*

**COPIES—See Application and New Trial,**

- of "cause of action" when to be filed and served, (R. 13), 8, 311.
- of entry in shop book, (C. 141), 33, 208.
- of written judgment and exhibits may be taken, (Apx. A. 11), 323.
- when to be certified, (Apx. A. 12), *ib.*
- fee for certified, (Apx. A. 12), *ib.*
- certified, of proceedings and decree, (C. 217), 221.
- certified, of decree and certificate for execution by another Court, 48, 105-6, 222-24.
- form of, (Apx. L. 12), 420-21.

**CO-PLAINTIFF—See Parties.**

**COPYRIGHT**, suit for compensation for infringement of, barred, (A. 19), 92.

**CORPORATION—See Company.**

**COSTS—See Fees.**

- when plaintiff sues in High Court in cases cognizable by Small Cause Court, (A. 22), 97.
- High Court may impose terms as to payment of, or security for, in cases of claims to distrained goods transferred, (A. 63), 135.
- of reference to High Court, (A. 70, C. 620), 55, 140, 301.
- effect of failure to comply with order directing deposit of, or security for, (A. 70), 140.
- deposit of, before application for new trial, when necessary, (R. 47), 52, 318.
- to defendant for misjoinder of plaintiff, (C. 26), 180.
- amendment of plaint, (C. 47), 187.
- on rejection of plaint, (C. 53), 190.
- of adjournments, (C. 156), 34, 210.
- of applications generally, (C. 218), 221.
- judgment to direct by whom, to be paid, (C. 219), *ib.*
- in all cases, in the discretion of the Court, (C. 220), 38, 221.
- may be set off against sum admitted or found due, (C. 221), *ib.*
- on withdrawal of suit, (C. 373), 19, 255-56.

**COSTS—(continued).**

- when security for, may be required from plaintiff, (C. 380), 62, 258.
- effect of failure to furnish, (C. 381), *ib.*
- of suit by minor, (C. 440), 66, 270.
- of attending, on plaint filed without next friend and rejected, (C. 442), 271.
- of order obtained without next friend or guardian, (C. 444), 66, 271.
- pleader when personally liable for, (C. 444), *ib.*
- security for, on retirement of next friend, (C. 447), 272.
- of suit on abandonment by minor on majority, (C. 452), 273.
- on repudiation by minor on majority, (C. 454), *ib.*
- improperly brought on behalf of minor, (C. 455), 274.
- caused by neglect of guardian *ad litem*, (C. 458), *ib.*
- of plaintiff in interpleader suit, (C. 475), 68, 280.
- where defendant is suing stakeholder, (C. 476), *ib.*
- of arbitration, (C. 519), 29, 292.
- of summary suit on negotiable instruments, (C. 532—36), 69, 70, 297—99.

**COUNSEL—See Advocate.****COURT—**

- Presidency Small Cause, definition of, (A. 4), 76.
- establishment and style of, (A. 5), *ib.*
- under superintendence of High Court, (A. 6), 56, 76.
- appointment, suspension, and removal of Judges of, (A. 7), 77.
- powers and authority of Judges of, (A. 9, R. 2), 78, 309.
- distribution of business of, (A. 10), 78-9.
- seal of, (A. 12), 79.
- appointment of Registrar and ministerial officers of, (A. 13), 80.
- law to be administered by, (A. 16), 82.
- local limits of Calcutta, (A. 17, App. B.), 82—327.
- jurisdiction of, (A. 18), 82—91.
- leave of, to sue when necessary, (A. 18), 5, 82—91.
- suits excluded from jurisdiction of, (A. 19), 91—94.
- power of, to try suits beyond pecuniary limits, (A. 20), 94-95.
- suits by and against officers of, (A. 21), 95-96.
- procedure in suits instituted in, (A. 23), 97-98.
- Code of Civil Procedure applicable to Calcutta, 162—307.
- Rules of Practice of Calcutta, 308—21.
- jurisdiction of, for recovery of immoveable property, (A. 41—49), 57-58, 116—26.
- power of, to levy distresses for rent, (A. 50—68), 58—60, 127—38.
- fees, (A. 71—77), 6-7, 141—45.
- contempt of, (A. 83—88), 147—51.
- persons exempt from arrest by, (A. 93), 153-54.
- jurisdiction of, under Act IV of 1876, B.C., (R. 54), 70-71, 320.
- power of, to frame forms, (R. 57), 321.
- definition of "district," (C. 2), 172.
- "foreign," (C. 2), 173.
- may require any person present to give evidence, (C. 165), 14, 213.

**COURT—** (*continued*).

- may examine ■ witness immediately, (C. 192), 16, 217.
- may recall and examine a witness, (C. 193), 32, 217.
- may order any point to be proved by affidavit, (C. 194), 35, 218.
- may amend decree, (C. 206), 37, 219.
- may give and apportion costs, (C. 220), 38, 221.
- may discharge judgment-debtor on giving security, (A. 29), 48, 104-5.
- may, in certain cases, suspend execution of decree, (A. 30), 105.
- may send its decree to another Court for execution, (A. 31, C. 223), 48, 105—7, 222-23.
- exemption of certain persons from arrest by, (A. 93), 153-54.
- when to issue notice to show cause why decree should not be executed, (C. 248), 41-42, 228.
- may summon and examine persons ■ to property liable to seizure, (C. 267), 234.
- deposit by defendant in, in satisfaction of claim, (C. 376), 26-27, 256.
- may issue commission to examine witness, (C. 383—91), 259-61.
  - to make local investigations, (C. 392-93), 261-62.
  - to examine accounts, (C. 394-95), 262.
- appoint guardian *ad litem*, (C. 443), 271.
- nominate arbitrator, (C. 507), 27, 288-89.
- appointment of umpire by, (C. 511), 28, 290.
- may modify or correct award, (C. 518), 29, 291-92.
- may file award in matter referred to arbitration without intervention of Court, (C. 525), 294.
- may entertain summary suit on negotiable instruments, (C. 532—38), 69-70, 297—300.
- power of, to refer questions to High Court, (A. 69, C. 617), 54, 138—40, 300.
- exemption of certain women from personal appearance in, (C. 640), 302.
  - persons from personal appearance in, (C. 641), *ib.*
- officers of, 72.

**COURT-FEES ACT—**

- sections of, applicable to Presidency Small Cause Courts, (A. 77), 144-45.
- rules made under, (Apx. E.), 380—82.

**COURT OF WARDS—**

- provisions of secs. 442 to 462 of Code not applicable to minors under, (C. 464), 276.

**CROSS-CLAIMS**, provisions ■ to, under same decree, (C. 247), 43, 227-28.

**CROSS-DECREES**, procedure in execution of, (C. 246), 42-43, 226-27.

**CROSS-EXAMINATION**, witnesses making affidavits may be ordered to be produced for, (C. 194), 35, 218.



**CUSTODY—**

penalty for escaping from, (C. 651), 306-7.  
of attached property, (Apx. A. 18), 324.

## DATE—

of commencement of Presidency Small Cause Court Act, (A. 1), 73.  
of Code of Civil Procedure, (C. 1), 171.

of summons, (R. 14), 8, 311.

for appearance of defendant to be fixed, (C. 69, R. 15, 16), 8, 192, 311.

of warrant in execution of decree, (C. 251), 43, 229.

of return of warrant, (R. 26), 43, 313.

for giving possession of immovable property to be mentioned in order, (A. 48), 58, 122.

**DEATH—**

marriage, and insolvency of parties to a suit, chapter on, 61, 251.

of party, suit not to abate, if cause of action survive, (C. 361), 61, 251.

of one of several parties, procedure on, (C. 362), 251.

of one of several plaintiffs, procedure on, (C. 363), *ib.*

of sole plaintiff, (C. 365), 252.

of one of several defendants, (C. 368), 253.54.

of guardian, *pendente lite*, (C. 459), 275.

of arbitrator or umpire, (C. 510), 289-90.

*DE BENE ESSE*, examination of party or witness, (C. 192), 16, 217.

DEBT—

may be attached and sold in execution of decree, (C. 266), 45, 232.  
not secured by negotiable instrument, attachment of, (C. 268),  
234—36.

payment of, into Court under prohibitory order, (C. 268), 234-36.

delivery of, sold in execution, how made, (C. 301), 244.

effect of certificate to collect, (C. 366), 253.

payment of money into Court in satisfaction of, (C. 376), 26, 256.

**DECISION**—See *Judgment, New Trial, Reference and Re-hearing.*  
of Small Cause Court when final, (A. 37), 51, 109.

**DECREE**—See *Execution, New Trial, and Re-hearing.*

judgment and, chapter on, 36, 219.

execution of, chapter on, 39, 222.

definition of, in Code of Civil Procedure, (C. 2), 172.

in Rules of Practice, (R. 1), 308.

of Registrar subject to new trial, (A. 36), 109.

of Presidency Small Cause Court when final, (A. 37), 109, 110.

for possession of immoveable property, (A. 43), 58, 122-23.

effect of decree in favor of occupant, (A. 47), 125-26.

no bar to suit for trying title, (A. 49), 58, 126.

**no suit to lie on, of Presidency Small Cause Court, (A. 94), 154.**

setting aside *ex parte*, (C. 108), 51, 202-3.

time for making application, 203.

not to be set aside without notice to opposite party, (C. 109), *ib.*

upon issue by agreement of parties, (C. 151), 209-10.

contents of, 37.

**DECREE—(continued).**

- amendment of, (C. 206), 37, 219.
- for delivery of moveable property, (C. 208), 37, 220.
- interest in suits for money, (C. 209), *ib.*
- payment of, by instalments, (C. 210), *ib.*
- application for instalments when to be made, 26.
- instalments of, how payable, (R. 34), 37, 315.
- effect of, when set-off allowed, (C. 216), 37, 38, 220-21.
- certified copy of, (C. 217), 39, 221.
- against Government or public officer, procedure upon, (C. 429), 63, 267.
- to follow judgment on award, (C. 522), 29, 293.
- on summary suit on negotiable instrument, (C. 532), 69, 297-98.
- contingent upon opinion of High Court, (A. 69, C. 617-21), 54, 138-40, 300-1.
- obtained by fraud, (C. 643), 303.

**DECREE-HOLDER,—See *Execution*.**

- definition of, (C. 2), 173.
- not to bid for or buy property at execution-sale without permission of Court, (C. 294), 49, 241-42.
- to pay subsistence-allowance, (C. 339), 50, 248.

**DEFAULT—See *Hearing*.****DEFENCE—See *Hearing*.**

- to be entered on record, 30.
- vexatious or groundless, by executors, &c., (R. 37), 38, 316.
- in summary suit on negotiable instrument, (C. 533) 69, 298.

**DEFENDANT—See *Appearance, Hearing and Service of Summons*.****DELIVERY—See *Execution of Decree*.****DEMANDS, splitting of, (C. 43), 3, 185.****DEPARTURE of witnesses, (C. 173), 15, 214.****DEPOSIT—See *New Trial and Reference to High Court*.**

- of money in Court by defendant, (C. 376), 26, 256.
- notice of, to plaintiff, (C. 377), 26, 257.
- interest on, not allowed after notice, (C. 378), 257.
- procedure where plaintiff accepts, in part satisfaction, (C. 379), 27, 257.
- procedure where plaintiff accepts, in full satisfaction, (C. 379), *ib.*
- of bill in summary suit on negotiable instrument, (C. 535), 70, 298.
- and refund of money generally, (Apex A. 30-32), 325-26.

**DEPOSITIONS—See *De Bene Esse*.**

- of witnesses taken under commission, (C. 389), 260.
- when, may be read in evidence, (C. 390), 260-61.

**DEPUTY CLERK—See *Officers of the Court*.****DESCENT, no person exempt from jurisdiction by ■■■■ of, (C. 10), 176.****DETENTION—See *Execution of Decree for Specific Moveables*.****DEVASTAVIT, when personal execution may issue against executor, &c., (R. 36), 38, 315.**

DIET-MONEY—See *Subsistence-Allowance*.

DIFFERENCE OF OPINION—See *Reference to High Court*.  
 procedure when two or more Judges differ on facts, (A. 11), 79.

DISCHARGE—See *Execution of Decree and Witnesses*.

DISMISSAL OF SUIT—See *Hearing*.

DISPOSAL OF SUIT—See *Hearing*.

DISTRESS FOR RENT—

- chapter on, 58—60, 127—38.
- limits within which, leviable, (A. 50), 127.
- saving of certain rents from, (A. 50), *ib.*
- appointment of officers for levying, (A. 51), *ib.*
- security to be given by appointees, (A. 52), 128.
- application for warrant of, how made, (A. 53), *ib.*
- issue of warrant, (A. 54), 129.
- time for levying, (A. 55), 59, 129, 313.
- what places bailiff may force open, (A. 56), 130.
- property which may be seized, (A. 57), 59, 130-31.
- impounding distress, (A. 58), 59, 131.
- inventory and notice, (A. 59), 59, 132.
- application to discharge and suspend warrant, (A. 60), 60, 132-33.
- claim to goods distrained made by a stranger, (A. 61), 60, 133-34.
- compensation to debtor or claimant, (A. 62), 60, 134-35.
- transfer of cases exceeding Rs. 1,000 to High Court, (A. 63), 60, 135-36.
- procedure in such cases, (A. 63), *ib.*
- appraisement, (A. 64), 136.
- notice of sale, (A. 64), *ib.*
- sale, (A. 65), 60, 136-37.
- application of sale-proceeds, (A. 65), *ib.*
- costs of distress, (A. 66), 137.
- account of costs and proceeds, (A. 67), *ib.*
- bar of, except under Act, (A. 68), *ib.*
- penalty for making illegal, (A. 68), 138.
- application under sec. 60 to be in writing, (R. 42), 317.
- contents of application, (R. 38), 316.
- claim under sec. 61 to be by plaint, (R. 49), 319.
- contents of plaint, (R. 50), *ib.*
- sale to be stayed and money in Court retained pending result, (R. 51), *ib.*
- form of application for, (Apx. L. 18), 425.
  - affidavit, (3rd Sched., A.), 158.
  - warrant, (3rd Sched., B.), 159.
  - inventory and notice, (3rd Sched., C.), *ib.*
  - appraisement, (3rd Sched., D.), 160.
- scale of fees, (3rd Sched., E.), *ib.*

DISTRICT COURT, definition of, (C. 2), 172.

DISTRICT OF THE PRESIDENCY SMALL CAUSE COURT—

- limits of, (A. 17), 82.
- proclamation defining limits of Calcutta, (Apx. B.), 327.

## DOCUMENTS—

- production of, at hearing, (C. 70, 138), 9, 20, 192, 207.
- return of, admitted in evidence, (A. 25), 32, 99-100.
- summons to produce, (C. 159, 164) 12, 14, 211-12, 213.
- power to call for records of Courts, (C. 137), 32, 207.
- application for production of, from other Courts, *ib.*
- service of process on clerk of the Court for production of, (R. 24), 32, 313.
- reception and rejection of, by Court, (C. 140), 32, 207-8.
- rules ■ to admission and return of, (C. 141), 32, 208.
- entries in shop-books, (C. 141), 33, 208.
- impounding, (C. 143), *ib.*
- insufficiently stamped, 33.
  - admissible on payment of duty and penalty, 33.
  - impounding of, 33.
  - adjudication by collector, 33.
- inadmissible under Evidence Act not to be used in evidence, (C. 137), 207.
- receipt to be given for returned, (A. 25), 99-100.
- return of, before time limited, (A. 25), *ib.*
- not to be returned if void or useless, (A. 25), 32, 100.
- any person in Court may be required to produce, (C. 165), 14, 213.
- service of summons for production of, (C. 166-167), 14, 213-14.
- stranger to suit may be summoned to produce, (C. 171), 14, 214.
- procedure on difference of opinion between Judges as to construction of, (A. 69), 138-40.

DWELLING—See *Jurisdiction*.

- what constitutes, 90.
- of government, *ib.*
- of trading corporation, *ib.*
- of parties to be mentioned in plaint, (C. 50), 1-2, 188.

EJECTMENT—See *Recovery of Possession of Immoveable Property*.

## ESCAPE, penalty for, from custody, (C. 651), 306.

EVIDENCE—See *Documents, Hearing and Witnesses*.

## EXECUTION OF DECREE—

- chapter on, 39-51, 222-50.
- when execution may issue, 39.
- form of application for, (Apx. L., 7), 40, 416.
  - contents of, (R. 22), 40, 313.
- fee for warrant in, (A. 72), 40, 142, 161.
- against person and property at same time, (C. 230), 40, 224.
- application for, by joint decree-holder, (C. 231), *ib.*
  - notice, 41.
  - by transferee of decree, (232), 41, 225.
  - notice, (C. 232), *ib.*
  - subject to certain equities, (C. 233), *ib.*
- against representative of a deceased judgment-debtor, (C. 234), *ib.*
  - notice, (248), 41, 228.
- stay of, pending decision in cross-suit, (243), 42, 226.
- questions to be decided by Court in, (C. 244), *ib.*
- cross-decrees, (C. 246), *ib.*



**EXECUTION OF DECREE—(continued).**

- cross-claims under same decree, (C. 247), 43, 227.
- issue of warrant in, (C. 250), 43, 228.
- date, signature, seal and delivery of warrant, (C. 251), 43, 229.
- warrant when returnable, (R. 26), 43, 313.
- days on which warrant cannot be executed, (R. 27), *ib.*
- endorsement of, (C. 251), 229.
- inventory and notice, (Apx. A. 19), 43-44, 324.
- warrant against representative of deceased person, (C. 252), 44, 229.
- against executor, &c., in person, (R. 36), 38, 315.
- immediate, when allowed, (C. 256), 39, 230.
- person requiring, to accompany bailiff, (R. 19), 44, 312.
- payment in satisfaction of decree, (C. 257), 44, 230.
- agreement to give time when void, (C. 257A), *ib.*
  - in satisfaction when void, *ib.*
- adjustment or payment out of Court, (C. 258), 45, 231.
- attachment of specific moveables in, (C. 259), *ib.*
- property liable to attachment and sale in, (C. 266), 45, 232-34.
  - removeable things attached to immoveable property, (A. 28), 46, 102-4.
- feeding charges for live-stock attached in, (Apx. M.), 46.
- peon's wages and other expenses in, (Apx. A. 18-29), 46, 324-25.
- property not liable to attachment and sale in, (C. 266), 46, 233.
- attachment of salary and allowances of public officer or railway servant, (C. 268), 47, 235-36.
  - of debt, share, &c., (C. 268), *ib.*
  - of moveable property in, (C. 269), 47, 236.
  - in particular cases, (C. 268-75, 296-303), 47, 234-38, 243-45.
  - of negotiable instrument, (C. 270), 236.
  - of property in Court or custody of Government officer, (C. 272), 47, 237.
  - of decree for money, (C. 273), *ib.*
- withdrawal of attachment in, (C. 275), 47, 238.
- rules as to negotiable instruments and shares in public companies, (C. 296), 47, 243.
- payment for other moveable property sold in, (C. 297), *ib.*
- irregularity not to vitiate sale of moveable property in, (C. 298), 47, 244.
- delivery of moveable property sold in, (C. 299), *ib.*
  - subject to lien, (C. 300), *ib.*
  - of debts and shares, (C. 301), *ib.*
- transfer of negotiable instruments and shares, (C. 302), 47, 245.
- vesting order in case of other property, (C. 303), *ib.*
- seizure of property in building in, (C. 271), 47, 236-37.
  - in zenana, (C. 271), *ib.*
- alienation of property attached in, when void, (C. 276), 47, 238.
- money attached in, may be paid in satisfaction, (C. 277), 48, 238.
- discharge of judgment-debtor or release of property taken in, on security, under secs. 29 and 30 of the Act, (R. 55, Apx. H.), 48, 104, 105, 320.
- attachment of immoveable property in, (A. 31), 48, 105-6.
- transfer of decree to another Court for, (A. 31, C. 223-25), 48, 105-6, 222-24.



**EXECUTION OF DECREE—(continued).**

- sale of property attached in, (C. 286, Apx. A. 18—29), 49, 240, 324-25.
- time of sale in, (C. 290), 49, 241.
- perishable property, (C. 269), 49, 236.
- stoppage of sale in, on payment, (C. 291), 49, 241.
- officer conducting sale in, not to bid or buy, (C. 292), *ib.*
- decree-holder not to bid or buy without leave of Court, (C. 294), *ib.*
- substitution of money for property attached in, 49.
- proceeds of sale in, when to be divided rateably, (C. 295), 242.
- resistance to, (C. 328—30, R. 52), 50, 245-46, 319.
- arrest of judgment-debtor in, (C. 336, R. 27), 50, 246—48, 313.
  - subsistence-money to be paid, (C. 338, Apx. J.), 50, 248, 410-11.
    - to be paid before arrest, (C. 339), *ib.*
    - to be costs in suit, (C. 340), 50, 249.
  - release of, on payment to officer, 50.
    - in other cases, (C. 341), 51, 249-50.
- term of imprisonment, (C. 342, Apx. K.), 51, 250, 411.
  - place of, (A. 95), 51, 154.
- endorsement on warrant, (C. 343), 250.

**EXECUTORS—**

- suits by and against, (C. 437), 65, 270.
- and administrators, joinder of, (C. 438), *ib.*
- husband of married executrix not to join, (C. 439), *ib.*
- ordinary decree against, (R. 35), 38, 315.
- when execution may issue against, in person, (R. 36), *ib.*
- vexatious or groundless defence by, (R. 39), 38, 316.

**EXEMPTION—**

- no, from jurisdiction by reason of descent or place of birth, (C. 10), 176.
- of certain suits from the jurisdiction of the Court, (A. 19), 91—94.
  - persons from arrest, (A. 93, C. 642), 153-54, 303.
  - from personal appearance in Court, (C. 640-41), 302.

**EXHIBITS—See Documents.****EX-PARTE—See Hearing.****FACT—**

- procedure in case of difference of opinion between Judges, (A. 11), 79.
- question of, may by agreement be stated in form of issue, (C. 150), 209.
- judgment thereon, (C. 151), 209-10.
- new trial on question of, (A. 37), 112.

**FEES—**

- and payment of money, chapter on, 6, 141—45.
- payable on institution of suit, (Apx. F.), 6, 141-42, 383—405.
- collected by adhesive stamps, (Apx. E.), 6, 380—82.
- table of institution and summons, in suits, (Apx. F.), 383—405.
- on agreement under sec. 20, (A. 71), 141, 385.
- on application for re-hearing in High Court, (A. 71), 115, 141, 383.
- in suits for recovery of possession of immoveable property, under sec. 41, (A. 71), 141, 383—405.

**FEEs—(continued).**

when there are two or ■■■■ defendants, (A. 72), 142, 161, 383—405.  
for summonses to witnesses, (A. 72), 142, 161.

“processes,”—i. e., notices served through the Court, warrants,  
copies of decrees for execution by other Courts, attachments,  
prohibitory orders, (A. 72), *ib.*

half, repaid on settlement before hearing, (A. 73), 142-43.

poor persons may be allowed to sue and apply without payment,  
or on part payment of, (A. 74), 6, 143.

power of Government to vary, (A. 75), 143.

receipt to be obtained on payment of, (R. 5, Apx. A. 30—34),  
7, 309, 325-26.

Court-Fees Act, (A. 77), 144-45.

sections of, saved, *ib.*

records and returns of, to be kept, (A. 91), 152-53.

in distresses for rent, (A. 66), 137.

scale of, (A. 3rd Sched., E.), 160.

account of, to be kept, (A. 67), 137.

of legal practitioners, (Apx. G.), 405—7.

of witnesses, (R. 29—32), 314-15, 321.

**FINAL**—See *New Trial, Reference to and Re-hearing by High Court.*

decision of Small Cause Court when, (A. 37), 109—14.

High Court when, (A. 39), 115-16.

**FINES AND PENALTIES—**

power to fine officers of Court, (A. 78), 145.

for default of bailiff or officer in execution of order or warrant,  
(A. 79), 146.

for extortion or default of officers, (A. 80), *ib.*

Court may summon witnesses, &c., (A. 81), 147.

enforcement of order, (A. 82), *ib.*

power to fine in certain cases of contempt of Court, (A. 83),  
147-48.

penalty for making illegal distress (A. 68), 138.

**FIXTURES**—See *Execution of Decree and Distress for Rent.*

**FOREIGN—**

Court, definition of, (C. 2), 173.

judgment of, (C. 2), *ib.*

rulers, suit by, (C. 431), 64, 268.

agents of, (C. 432), *ib.*

execution of decrees of, courts, (C. 434), *ib.*

**FORMA PAUPERIS**—See *Fees.*

**FORMS—**

Schedule of, in distresses for rent, 158—60.

of causes of action, plaints and concise statements,  
(Apx. C.), 330—79.

of proceedings in Court, (Apx. L.), 412—32.

of bond and warrant, (Apx. O.), 434-5.

**FRAME OF THE SUIT**—See *Plaint.*

**GAIN**—See *Jurisdiction.*

GOODS—See *Causes of Action, Plaint Forms and Execution of Decree.*

#### GOVERNMENT—

- appointment, suspension and removal of Judges by, (A. 7), 77.
- rank and precedence of Judges to be fixed by, (A. 8), 78.
- seal of the Court to be prescribed by, (A. 12), 79.
- registrar to be appointed by, (A. 13), 80.
- appointment of clerks, bailiffs and ministerial officers subject to control of, (A. 13), *ib.*
- no registrar or officer drawing a salary of Rs. 100 monthly to be dismissed without orders of, *ib.*
- registrar may be invested with certain judicial powers by, (A. 14), 80.
- sanction of, necessary to extension, omission or application of Civil Procedure Code, (A. 23), 97-98.
- remuneration of distress bailiffs subject to control of, (A. 51), 127.
- power of, to vary fees, (A. 75), 143.
- registers, books and accounts subject to approval of, (A. 90), 152.
- may call for records, returns and statements, (A. 91), *ib.*
- holidays to be approved by, (A. 92), 153.
- place of imprisonment of judgment-debtors to be fixed by, (A. 95), 154.
- claims against, in which Court has no jurisdiction, (A. 19), 91.
- in suits against, cause of action must have arisen within local limits, 90.
- expenses of witnesses who are servants of, 321.
- pleader, definition of, (C. 2), 172.
- or public officers, suits by or against, chapter on, 63, 264.
  - how to be instituted, (C. 416), 63, 264.
- persons authorized to act for, (C. 417), 264.
- plaints in suits by Secretary of State, (C. 418), *ib.*
- agent for, to receive process, (C. 419), 265.
- appearance and answer by Secretary of State, (C. 420), *ib.*
- attendance of person able to answer questions in suit against, (C. 421), *ib.*
- service on officers of, (C. 422, R. 21), 265, 313.
- extension of time to enable reference to, (C. 423), 265.
- notice before suing, or public officer, (C. 424), 63, 266.
- no arrest in suits against, (C. 425), *ib.*
- application where defence undertaken by, (C. 426), *ib.*
- procedure when no application by, (C. 427), *ib.*
- no arrest or attachment before judgment, *ib.*
- exemption of officers of, from personal appearance, (C. 428), 63, 267.
- procedure where decree against, (C. 429), *ib.*

GUARDIAN *AD LITEM*—See *Minors.*

#### HEARING—

- chapter on, 20 – 36, 216-17.
- sitting of the Courts and order of business, 20.
- attendance of parties, &c., at, (C. 96), 20, 199.
- witnesses and documents to be in readiness at, (C. 138), 20, 207.
- disposal of business at, 21.

**HEARING—(continued).**

- if neither party appears suit to be dismissed, (C. 98), 21, 199.
- second summons may be granted, [C. 100 (b)], 21, 200.
- dismissal of suit on non-payment of fee and failure to serve second summons, (C. 97), 21, 199.
  - on failure to serve successive summonses, [C. 100 (b)], 21, 200.
- cases in which plaintiff may bring fresh suit or apply for restoration, (C. 99), 22, 199.
- better practice in small cases, 22.
- withdrawal of suit on failure to serve successive summonses, *ib.*
- procedure when plaintiff only appears, [C. 100(a)], 22, 200.
  - when summons not duly served, [C. 100(b)], *ib.*
  - when summons served but not in time, [C. 100(c)], 23, *ib.*
- notice by summons, 23.
- second summons fee, *ib.*
- procedure where defendant only appears, (C. 102), 23, 201.
- effect of decree against plaintiff by default, (C. 103), *ib.*
- when defendant residing out of British India is absent, (C. 104), *ib.*
- where one or more of several plaintiffs is absent, (C. 105), 24, 202.
  - defendants is absent, (C. 106), *ib.*
- consequence of non-attendance of party ordered to appear in person, (C. 107), *ib.*
- setting aside decree *ex parte* against defendant, (C. 108), *ib.*
  - deposit in such cases, (R. 47), 25, 318.
  - notice to opposite party, (C. 109), 25, 203.
- power to stay proceedings where all defendants do not reside within jurisdiction, (C. 20), 25, 178-79.
- non-contested cases, (C. 152), 25, 210.
- if one of several defendants be not at issue with plaintiff, (C. 153), *ib.*
- instalments, (C. 210), 25, 220.
  - special notice when necessary, 26.
  - time for making application for instalments, *ib.*
- Court may in certain cases suspend execution, (A. 30), 26, 105.
- deposit in satisfaction of claim, (C. 376), 26, 256.
  - notice of, before, (C. 377), 26, 257.
  - form of notice, (Apx. L. 13), 421.
  - procedure where plaintiff accepts ■ satisfaction in part, (C. 379), 27, 257.
    - satisfaction in full, *ib.*
- reference to arbitration, (C. 506), 27, 288.
  - nomination of arbitrator, (C. 507), *ib.*
    - by Court, 289.
  - order of reference, (C. 508), 27, 289.
  - form of order (Apx. L. 15), 422.
  - Court may extend time for making award, (C. 514), 27, 291.
  - reference to two or more arbitrators, (C. 509), 28, 289.
  - appointment of umpire, (C. 511), 28, 290.
  - arbitrator not to delegate authority, 28.
  - summoning witnesses, (C. 513), 28, 290.
  - punishment for default, *ib.*
  - award to be signed and filed in Court, (C. 516), 29, 291.
- reading award, 29.

## HEARING—(continued).

## reference to arbitration—

- procedure before confirmation, 29.
- confirmation and judgment, (C. 522), 29, 293.
- modification or correction of award, (C. 518), 29, 291-92.
- setting aside award, (C. 521), 29, 292.
- remitting award, (C. 520), *ib.*
- costs of arbitration, (C. 519), *ib.*
- no new trial or reference from ■ award, 29.

## contested cases, 30.

- oral examination of parties, &c., for ascertainment of matters in dispute, (C. 118), 30, 206.
- defence to be entered on record, 30.
- amendments to be made at earliest opportunity, (C. 34), 30, 182.
- amendments and rejection of plaints, (C. 53-4), 30, 190-91.
- when plaint cannot be altered, 31.
- amendments to be signed by Judge, (C. 53), 31, 190.
- statement of case, (C. 179), 31, 216.
- rules as to right to begin, *ib.*
- reply, (C. 180), 31, 217.
- examination of witnesses, (C. 181), *ib.*
- reading and tender of evidence taken *de bene esse*, (C. 192), *ib.*
- Court may recall and examine witnesses, (C. 193), 32, 217.
- may send for its own or records of other Courts, (C. 137), 32, 207.
- application for production of records, 32.
- Small Cause Court records, (R. 24), 32, 313.
- reception of documents, (C. 140), 32, 207-8.
- rules as to admission and return of documents, (C. 141), 32-3, 208.
- entries in shop-books, *ib.*
- impounding documents, (C. 143), *ib.*
- insufficiently stamped documents, 33.
- documents admissible on payment of duty and penalty, *ib.*
- impounding of inadmissible documents, *ib.*
- adjudication by collector, *ib.*
- reference to court accountant, 34.
- adjournments, (C. 156), 34, 210.
- procedure on adjourned date, (C. 157), 34, 211.
- Court may proceed on default of party, (C. 158), *ib.*
- written statements, (A. 24, C. 114-16), 35, 98-9, 205.
- set-off, (C. 111), 35, 203-5.
- time for filing set off, (R. 28), 35, 314.
- affidavits, (C. 194), 35, 218.
- declarant may be ordered to appear, (C. 195), *ib.*
- issues by agreement of parties, (C. 150), 36, 209.
- decree upon, (C. 151), *ib.*
- detention, preservation or inspection of property, (C. 499), 36, 287.

## of new trial, (R. 48), 51-3, 318.

## HIGH COURT—

- reference to, (A. 69, C. 617), 54, 138-40, 300.
- scale of costs for references to, (Apx. A. 36), 55, 326.



**HIGH COURT—** (*continued*).

- re-hearing by, (A. 38), 55, 114-15.
  - procedure in, (A. 39), 56, 115-16.
  - execution of decree of, (A. 40), 116.
  - fees to be paid before receipt of application by, (A. 71), 56, 141-42.
- superintendence of, (A. 6), 56, 76-7.
- rules of practice to be sanctioned by, (A. 9), 57, 78.
- to prescribe registers and returns, (A. 90), 57, 152.
- requisitions by, (A. 91), *ib.*
- may transfer suits, (C. 25), 57, 179.
- may call for records, (C. 622), 57, 301.
- may try suits by and against officers of Court, (A. 21), 95.
- costs when plaintiff sues in, in cases cognizable by Small Cause Court, (A. 22), 97.
- appeal to, in certain cases of contempt, (A. 88), 151.
- Judges of, exempted from arrest, (A. 93), 153.

**HOLIDAYS—**

- Court to draw up list of, in every year, for approval of Government, (A. 92), 153.
- list of, to be published in official *Gazette*, *ib.*
- business performed by the Judges on, *ib.*
- on what, summonses, processes and warrants not to be executed, (R. 27), 313.
- list of authorized, (Apx. II.), 407.
- rules observed in execution of decrees on certain, (Apx. H.), 408.

**HUNDI—**

- all parties to, may be joined as defendants, (C. 29), 181.
- summary procedure upon, (C. 532), 69, 297.
- deposit of, in summary suit, (C. 535), 70, 298.

**IMMEDIATE EXECUTION**, when Court may order, (C. 256), 39, 230.**IMMOVEABLE PROPERTY—**See *Recovery*, &c.

- suits for, barred, (A. 19), 92.
- when things attached to, may be attached in execution of decree, (A. 28), 102-4.
- when, may be attached in execution of decree, (A. 31), 105-7.
- recovery of possession of, chapter on, 57-8, 116-26.
  - procedure only applicable to tenants or occupiers holding over, (A. 41), 58, 116-21.
  - question of purely adverse title cannot be tried, *ib.*
  - when summons against person occupying, without leave, may issue, (A. 41), *ib.*
  - service of summons, (A. 42), 58, 121-22.
  - order for possession, (A. 43, Apx. L. 26), 58, 122-23, 431.
  - effect of order, (A. 44), 123.
  - applicant when not to be deemed a trespasser, (A. 45), 124.
  - occupant may — for compensation, *ib.*
  - liability of applicant obtaining order when not entitled, (A. 46), 124-25.

**IMMOVEABLE PROPERTY—(continued).**

recovery of possession of—

stay of proceedings on giving security, (A. 47, Apx. L. 17),  
58, 125-26, 424.

proceedings under chapter, how regulated, (A. 48), 126.

recovery of possession no bar to suit to try title, (A. 49), 58,  
126.

**IMPOUNDING—**

of documents, (C. 143), 33, 208.

distress, (A. 58), 59, 131.

**IMPRISONMENT—See *Execution of Decree*.**

in certain cases of contempt, (A. 83), 147-48.

**INFANCY—See *Minors*.****INSOLVENCY—**

when plaintiff's, bars suit, (C. 370), 61, 255.

Chapter XX relating to, inapplicable to P. S. C. Court, 248.

**INSTALMENTS—**

Court may order payment of decree by, (C. 210), 25, 37, 220.

when application for, should be made, 25-6.

how payable, (R. 34), 37, 315.

execution in default of payment, *ib*.

**INSTITUTION OF SUITS—See *Plaint*.**

how effected generally, (Apx. F.), 1, 6, 383.

by or against Government or public officers, (C. 416), 63, 264

aliens and by or against foreign and native rulers, (C. 430), 64, 267.

and against corporations and companies, (C. 435), 64, 269.

trustees, executors and administrators, (C. 437),  
65, 270.

minors and persons of unsound mind, (C. 440),  
66, 270.

military men, (C. 465), 67, 276.

interpleader suits, (C. 470), 68, 278.

summary suit on negotiable instruments, (C. 532), 69, 297.

for recovery of possession of immoveable property, (A. 41, R. 53,  
Apx. F.), 58, 116, 319, 383.

by way of claim or objection to attached or distrained property,  
(R. 49, 52), 319.

forms of plaints, &c., (Apx. C.), 330-79.

**INTEREST—**

Court may order, — principal sum decreed, (C. 209), 37, 220.

not allowed on deposit after notice to plaintiff, (C. 378), 257.

**INTERLOCUTORY ORDERS—**

Court may order interim sale of perishable articles, (C. 498), 287.

order detention, &c., of subject-matter and authorize  
entry, taking of samples and experiments, (C. 499),  
*ib*.

application for, to be on notice, (C. 500), *ib*.

deposit of money, &c., in Court, (C. 502), 288.

**INTERPLEADER SUIT—**

- chapter on, 68, 278—80.
- when, may be instituted, (C. 470), 68, 278.
- plaint in, (C. 471), *ib.*
- payment of thing claimed into Court, (C. 472), 68, 279.
- procedure at hearing, (C. 473), *ib.*
- when agents and tenants may institute, (C. 474), *ib.*
- charge of plaintiff's costs, (C. 475), 280.
- procedure where defendant is suing stakeholder, (C. 476), *ib.*

**INTERPRETATION CLAUSE** in Code of Civil Procedure, (C. 2), 171—74.**INVESTIGATION—**

- into conduct of ministerial officers, (A. 78—82), 145—47.
- of claims to distrained property, (A. 61), 133-34, 319.
- of claims and objections to attached property, (C. 278, 487), 238-39, 285, 319.
- evidence to be adduced by claimant, (C. 279), 239.
- release of property from attachment, (C. 280), *ib.*
- disallowance of claim, (C. 281), *ib.*
- commissions for local, (C. 392-93), 261-62.

**IRREGULARITY—**

- not to vitiate sale of moveable property, (C. 298), 244.
- injured person may sue for compensation, *ib.*

**ISSUES—**

- questions of fact or law may, by agreement, be stated in form of, (C. 150), 209.
- Court when satisfied may pronounce judgment, (C. 151), *ib.*

**JOINDER—**See *Parties and Causes of Action.***JUDGES—**See *Court.*

- appointment, suspension and removal of, (A. 7), 77.
- barrister, *ib.*
- rank and precedence of, (A. 8), 78.
- powers of, (A. 9, 23, R. 2, 57), 78, 97-8, 309, 321.
- distribution of business amongst, (A. 10), 78-9.
- procedure in case of difference of opinion amongst, (A. 11), 79.
- not to practise or trade, (A. 15), 81.
- may sit apart or together, (R. 2), 309.
- not required to deliver written judgment, 36.
- judgment of one Judge may be pronounced by another, (C. 199), 37, 219.
- all amendments to be signed by, (C. 53), 31, 190.
- powers of, under Ch. VIII of the Act, (A. 51), 127-28.
- senior Judge, in absence of Chief Judge, to appoint bench for new trial, (R. 48), 318.
- definition of, (C. 2), 172.
- exemption of High Court, from arrest, (A. 93), 153-54.
- Small Cause Court, when exempted from arrest, (C. 642), 303.

**JUDGMENT—**

- and decree, chapter on, 36—39, 219—21.
- when and how pronounced, 36.

**JUDGMENT—***(continued).*

- need not be in writing, 36.
- when final, (A. 37, 70), 51, 55, 109—14, 140.
- of High Court on re-hearing final, (A. 39), 116.
- copy of written, may be taken, (Apx. A. 11), 36, 323.
- of one Judge may be pronounced by another, (C. 199), 37, 219.
- on award, (C. 522), 29, 293.
- of arrest and attachment before, (C. 477—91), 281—86.

**JUDGMENT-DEBTOR—**See *Execution of Decree.*

- definition of, (C. 2), 173.

**JURISDICTION—**

- local limits of, (A. 17, Apx. B.), 82, 327—29.
- suits in which Court has, (A. 18), 82—91.
- suits in which Court has no, (A. 19), 91—94.
- by consent of parties beyond pecuniary limits, (A. 20), 94-95.
- concurrent, of High Court in suits by and against officers of Court, (A. 21), 95-6.
- when leave to sue within local, necessary, (A. 18, 5, 90.
- in recovery of possession of immoveable property, (A. 41—49), 57, 116—26.
- in distress for rent, (A. 50—68), 58, 127—38.
- under Act IV of 1876, (B. C.), 70-1, 432-33.

**LANDLORD—**See *Recovery of Immoveable Property and Distress for Rent.***LAND-REVENUE—**

- of Calcutta, amendment of Acts relating to, (A. 3), 75-6.
- powers of Collector of Calcutta, in respect of arrears of, *ib.*
- suits concerning, barred, (A. 19), 91.

**LANGUAGE** of plaint, 1.**LAW** administered by the Court, (A. 16), 82.**LEASE** must be produced on application for distress-warrant, 128.**LEGAL REPRESENTATIVE—**See *Execution of Decree.***LETTER—**

- service by, when defendant resides out of British India, (C. 89), 197.
- substitution of, for summons, (C. 91), *ib.*
- mode of sending, (C. 92), 198.
- postage on, (C. 95), *ib.*
- for production of records from other Courts, (C. 137), 207.
- Judges not to be addressed by, in matters relating to suits or proceedings, (R. 56), 72, 320.
- correspondence by, to be addressed to Registrar, 72.

**LETTERS PATENT**, superintendence of High Court under, (A. 6), 76-7.**LIBEL**, suits for, barred, (A. 19), 92.

**LIMITATION—**

- plaint must show grounds of exemption from, (C. 50), 2, 189.
- effect of omission, (C. 54), 2, 191.
- law of, not affected by fresh suit, (C. 374), 256.
- of time for making application to set aside decree against plaintiff, by default, (C. 103), 23, 201.
- to set aside decree *ex parte* against defendant, (C. 108), 24, 202-3.
- for instalments, 26.
- for new trial, (A. 37), 52, 109-10.
- for re-hearing in High Court, (A. 38), 55, 114.
- for giving security for reference to High Court, (A. 70), 54, 140.
- for levying distress for rent, (A. 50), 59, 127.
- for summary procedure on negotiable instruments, 69.
- of warrants in execution of decrees, (R. 26), 313.

**LIVESTOCK**, scale of feeding charges for, under attachment, (Apz. M.), 432.

**LOCAL GOVERNMENT—See Government.**

**LOCAL INVESTIGATION—**

- commissions for, (C. 392), 62, 261.
- on procedure of commissioner, (C. 393), 262.

**LOST NEGOTIABLE INSTRUMENTS—**

- suits on, (C. 61), 191.
- indemnity-bond in suit on, (Apz. L. 20), 426.

**MADRAS—**

- Act applicable to, (A. 5), 76.
- enactments relating to, repealed, (A. 2, Sched. I), 74-5, 155.

**MALICIOUS PROSECUTION**, suits for, barred, (A. 19), 92.

**MARRIED WOMEN—**

- suit not abated by marriage of female party, (C. 369), 61, 254.
- execution may issue against a, alone, *ib.*
- when husband liable for wife's debt, *ib.*
- Court may refuse personal execution against a Christian, 61.
- may ~~and~~ and be sued in their own name in respect of their separate property, *ib.*
- may not be guardian *ad litem*, (C. 457), 274.

**MILITARY MEN**, suits by and against, chapter on, (C. 465-69), 67-68, 276-78.

**MINORS—**

- when, may sue as if of full age, (A. 32), 3, 66, 107-8.
- suits by and against, chapter on, (C. 440-64), 66-7, 270-76.

**MISCELLANEOUS MATTERS AND PROCEEDINGS**, chapter on, 72, 152-54, 302-7, 320-21.

**MISJOINDER—**

- of parties, suit not to fail by reason of, (C. 31), 181.
- objections for, when to be taken, (C. 34), 182.



**MISJOINDER—***(continued).*

of claims, (C. 44-b), 186.

rejection or amendment of plaint for, of parties, (C. 53), 190.  
of claims, *ib.*

**MISTAKE—**See *Amendment.***MONEY—**See *Fees and Execution of Decree.*

precise amount claimed to be stated in plaint, (C. 50), 2, 188.

in suits for, decree may order interest, (C. 209), 220.

modes of paying, under decree, (C. 257), 230.

attachment of decree for, (C. 273), 237-8.

payment of, into and out of Court, (R. 8, Apx. A. 30-4), 7, 310,  
325-26.

receipt for, to be obtained, (R. 5), 7, 309.

no payment made except on production of receipt or order of  
Court, *ib.*

deposit of, in satisfaction of claim, (C. 376), 26, 256.

notice of, (C. 377), 26, 257.

interest on, not allowed after deposit, (C. 378), 257.

form of notice, (Apx. L. 13), 421.

**MOFUSSIL—**

Act inapplicable to, 76.

when Presidency Small Cause Court decree may be executed in,  
(A. 31), 105-6.

summons may be served in, (C. 85), 195.

scale of fees for serving processes in, (Apx. I.), 409.

**MOVEABLE PROPERTY—**See *Execution of Decree.*

**MUKHTYAR** not included in the definition of "pleader," (R. 1),  
309.

**NAMES** of parties to be stated in plaint, (C. 50), 2, 188.

**NEGOTIABLE INSTRUMENTS—**See *Execution of Decree.*

joinder of parties liable on, (C. 29), 181.

summary procedure on, chapter on, (C. 532-38), 69-70, 297-300.

**NEW TRIAL—**

chapter on, 51-53, 109-14.

of *ex parte* orders and decrees, (C. 99, 103, 108), 51, 199, 202,  
203, 317-18.

in contested cases, (A. 37), 51, 109-14, 317-18.

application for, how made, (R. 44), 52, *ib.*

contents of application, (R. 45), *ib.*

certificate of Advocate, &c., (R. 46), 52, 318.

deposit of debt and costs, (R. 47), *ib.*

bench before which application to be made, 52.

hearing of *ex parte* applications, 53.

of applications under sec. 37, (R. 48), 53, 318.

power of Court ■ to granting, (A. 39), 53, 110.

grounds for granting, 113.

procedure in case of difference of opinion amongst Judges, (A. 11,  
69), 53, 79, 138-40.

**NEW TRIAL**—(*continued*).

- no, from judgment on award, 110.
- will not lie from an order refusing ■ reference under sec. 617, 111.
- application for, to be in duplicate and served on opposite party (R. 44), 317.

**NEXT FRIEND**—See *Minors*.**NON-ATTENDANCE**—See *Parties and Witnesses*.**NON-JOINDER**—See *Parties*.**NORTH-WESTERN PROVINCES**, fees for service of processes in, (note), 410.**NOTICE**—See *Application*.

- to defendant in summons to produce documents and witnesses, (C. 70-71), 9, 192-3.
- number of days, before returnable date of summons, (R. 16), 8, 311-12.
- in special cases, *ib*.
- meaning of "clear days," 8.
- to defendant out of jurisdiction, (R. 17), 9, 312.
- to defendant on application by plaintiff for restoration of suit, (R. 44), 22, 317.
- when summons served, but not in due time, (C. 100C.), 23, 200.
- to defendant on application to set aside order of dismissal under sec. 103, (R. 44), 23, 201, 317.
- to plaintiff, on application to set aside *ex parte* decree or order under sec. 108, (R. 44), 24, 202, 317.
- no decree to be set aside except on, to opposite party, (C. 109), 25, 203.
- on application for instalments, when necessary, 26.
- execution of decree not to be suspended without, to opposite party, *ib*.
- of deposit in satisfaction of claim, (C. 377), 26, 257.
  - form of, (Apx. L. 13), 421.
- of set-off, (R. 28), 35, 314.
- of amendment of decree, (C. 206), 37, 219.
- on application for execution by joint decree-holder, 41.
  - by transferee of decree, (C. 232), 41, 225.
  - against legal representative of ■ deceased party, (C. 248), 41, 228.
- for entering up payment or adjustment of decree, (C. 258), 45, 231.
- to substitute money for attached property pending investigation of claim or objection, 49.
- for new trial under sec. 37, (R. 44), 52, 110, 317.
- for re-hearing in High Court, (A. 38), 56, 115.
- of appraisement and sale in distress for rent, (A. 59), 59, 132.
- of sale, (A. 64), 136.
- no suit to be instituted against officer of Court without, (C. 424), 63, 96, 266.

NOTIFICATION of portions of Civil Procedure Code applicable to Court, 162—70.

OBJECTION—

- as to non-joinder or mis-joinder — want of parties, when to be taken, (C. 34), 18, 182
- to attachment of property in execution of decree, (C. 278), 49, 238, 319.
- to distress for rent, (A. 60), 60, 132.

OBSTRUCTION to execution of decree, (C. 328-30), 50, 245-46.

OFFICES OF THE COURT—

- hours of business in, (R. 8), 310.
- rules relating to business in, (Apx. A.), 322—26.

OFFICERS OF THE COURT—

- chapter on, 72, 145—47.
- appointment of registrar, (A. 13), 80.
  - clerks, bailiffs and ministerial officers, *ib.*
  - powers and duties of, *ib.*
  - suspension or removal of, *ib.*
- registrar may be invested with judicial powers in certain cases and matters, (A. 14, 33—36), 80, 108, 109.
- not to practise or trade, (A. 15), 81.
- appointment of bailiffs and appraisers in distress department, (A. 51), 127.
  - security to be given by appointees, (A. 52), 128.
  - remuneration, (A. 66), 137.
- suits by and against, (A. 21), 95-6.
  - costs in such suits, (A. 22), 97.
- power to fine, in certain cases, (A. 78), 145.
- liability of, for default in execution of order or warrant, (A. 79), 146.
  - for extortion or default, (A. 80), *ib.*
  - Court may summon witnesses, &c. (A. 81), 147.
  - enforcement of order against, (A. 82), *ib.*
- tender of amends by, (A. 96), 154.
- limitation of prosecutions against, (A. 97), *ib.*
- rules for the guidance of, (Apx. A.), 322—26.

ORDER—See *Judgment and Decree*—

- in writing how served, (C. 94), 198.
- for compensation and costs in discretion of Court, (A. 26, C. 218, 220), 38, 101, 221.
- of reference to arbitration, (C. 508), 27, 289.
- of registrar in certain cases (A. 35), 109.
  - subject to new trial, (A. 36), *ib.*

PARTIES—See *Appearance and Jurisdiction*—

- not exempt from jurisdiction by — of descent or place of birth, (C. 10), 176.
- power of Court to try suits beyond pecuniary limits by consent of, (A. 20), 94.
- when subject-matter *res judicata* between, to a suit, (C. 13), 177.

**PARTIES—***(continued).*

- description and residence of, to be stated in plaint, (C. 50), 1, 2, 188.
- who may be joined as plaintiffs, (C. 26), 180.
- power of Court to substitute — add plaintiffs, (C. 27), *ib.*
- who may be joined as defendants, (C. 28), *ib.*
- joinder of, liable on same contract, (C. 29), 181.
- when one of several, may sue or defend on behalf of others, (C. 30), *ib.*
- suit not to fail for mis-joinder of, (C. 31), *ib.*
- Court may dismiss or add, (C. 32), *ib.*
- consent of, added, (C. 32), 182.
- power to apply to be made, to a suit, *ib.*
- defendants added to be served, *ib.*
- conduct of suit, *ib.*
- when defendant added, plaintiff to amend, (C. 33), 182.
- time for taking objections to non-joinder or mis-joinder of, (C. 34), 182.
- appearance of, how to be made, (C. 36), 16, 17, 96, 183, 199.
- recognized agents of, (C. 37), *ib.*
  - service of process on, (C. 38), 184.
- amendment of plaint by, (C. 53), 190.
- when, may be ordered to appear in person, (C. 67), 192.
- day for appearance of, to be fixed, (C. 69), *ib.*
- consequence of non-appearance of, at hearing, (C. 93), 21, 199.
  - of non-attendance of, ordered to appear in person, (C. 107), 24, 202.
  - of refusal to give evidence, (C. 177), 15, 216.
- death, marriage and insolvency of, to a suit (C. 361—72), 61, 251—55.
- examination of, immediately, (C. 192), 16, 217.
  - by commission, (C. 383, 386), 62, 259.
- appearance of, before commissioner, (C. 400), 63, 264.
- may agree to refer to arbitration, (C. 506), 27, 288.
- proceedings on agreement of, (C. 527—31), 69 295-97.
- exempted from personal appearance in Court, (C. 640-41), 302.
  - from arrest, when, (C. 642), 303.

**PARTNER—**

- may sign and verify plaint for co-partners, in certain cases, 5.
- service of summons on one, of several partners, (C. 74), 193.
- when one, may sue or defend for co-partners, (C. 30), 181.

**PARTNERSHIP—**

- suits for dissolution of, or for account of partnership-transactions, barred, (A. 19, 92, 93-4.
- when account stated may be sued on, 94.

**PAUPER—***See Fees.***PAYMENT—***See Fees and Money.*

- of money, into and out of Court, (R. 8, Apx. A. 30-4, 310, 325-26.
  - receipt for, to be obtained, (R. 5), 7, 309.
- no, except on production of receipt or order of Court, *ib.*

**PENAL CODE—**

- procedure in certain cases of contempt, (A. 83), 147.
- in cases of certain offences, (C. 643), 303.

**PENALTY—See *Fines and Contempt of Court.*****PERSONAL APPEARANCE—See *Appearance and Parties.*****PILOTS, service of summons or process on, (R. 21), 11, 313.****PLAINT—**

- suits to be commenced by, 1.
- to be on form prescribed by Court, *ib.*
- language of, *ib.*
- particulars to be contained in, (C. 50), 1-2, 188.
- to be signed and verified, (C. 51), 4, 189-90.
- who may sign and verify, 5.
- leave to file, when necessary, (A. 18), 5, 83.
- must be properly stamped before filing, 6.
- filing of, in Summons Office, 7-8.
- receipt to be obtained for, 7.
- copy or concise statement of "cause of action" when to be filed with, (R. 13), 8, 311.
- when, may be rejected or amended, (C. 53), 30, 190.
- must be rejected, (C. 54), *ib.*
- when, cannot be altered, 31.
- amendment of, when to be made, (C. 34), 30, 182.
- in suits by Secretary of State, (C. 418), 264.
- subscription and verification of, by corporation or company, (C. 435), 269.
- filed by minor without next friend to be rejected, (C. 442), 271.
- in interpleader suit, (C. 471), 278.
- in summary suit on negotiable instrument, (C. 532), 297.
- in claim or objection under section 61 of the Act or 278 or 487 of the Code, (R. 49), 319.
- particulars to be contained in, (R. 50), *ib.*
- under section 41 of the Act, (R. 53), 319.
- causes of action, plaint forms, and concise statements, (Apx. C.), 330-79.
- form, (Apx. L. 1), 412.

**PLAINTIFF—See *Parties.*****PLEADER—**

- definition of, in rules of practice, (R. 1), 309.
- when entitled to appear, plead and act, (R. 9), 310.
- service of process on, (R. 10), *ib.*
- certificate by, when necessary, (A. 38, R. 46), 52, 56, 114, 318
- when entitled to take copies of documents and papers, (Apx. A. 11), 323.
- when power in favor of, may be filed, (Apx. A. 13), *ib.*
- fees of, (Apx. G.), 144, 405-7.
- when, may be held personally liable for costs, (C. 444), 271.

**POSSESSION OF IMMOVEABLE PROPERTY—See *Recovery, &c.***



POSTAGE to be prepaid, (C. 95), 198.

POSTPONEMENT—See *Adjournment*.

POWER-OF-ATTORNEY—

persons holding, from non-resident parties, are recognized agents,  
(C. 37), 183.

of attorney or pleader, how filed, (Apx. A. 13), 323.

when attorney or pleader must file, (R. 9), 310.

PRACTICE OF THE COURT how regulated, (A. 9, 23), 78, 97-8.

PRESIDENCY TOWNS—

establishment of Courts of Small Causes in, (A. 5), 76.

jurisdiction of, (A. 17, 18), 82.

service of process of other Courts in, (C. 86), 196.

commission to examine witnesses in, (C. 386), 259.

PREVENTIVE OFFICERS, service of summons or process on,  
(R. 21), 11, 313.

PREVIOUS ACTS, reference in, (A. 2, C. 3), 75, 175.

PRIORITY—

question of title or, to property deposited in Court and sought to  
be attached, (C. 272), 237.

proceeds of execution-sale to be divided rateably among decree-  
holders who have applied for execution, (C. 295), 242.

mortgagee or incumbrancer, as such, not entitled to share in  
surplus, if any, *ib.*

PRIVILEGE—

persons exempted from arrest, (A. 93, C. 642), 153-54, 303.

of certain women from personal appearance in Court, (C. 640),  
302.

of certain persons, (C. 641), *ib.*

PROCEDURE—See *Practice of the Court*.

Code of Civil, 162—307.

PROCESS—

definition of, (R. 1), 309.

service and execution of, (R. 14—27), 311—13.

fees, not being summonses, (A. 72, R. 25), 142, 161, 313.

PROCLAMATION fixing the limits of Calcutta, 327.

PRODUCTION—See *Document*.

PROHIBITORY ORDER—See *Execution of Decree*.

PROMISSORY NOTES—See *Negotiable Instruments*.

joinder of parties liable on, (C. 29), 181.

suit must include whole claim upon, due at time of filing, 3.

PROOF OF SERVICE—See *Summons*.

PROPERTY—See *Execution of Decree and Recovery, &c.*

PROTECTION—See *Officers of the Court.*

PUBLIC COMPANIES—See *Corporations and Companies and Execution of Decrees.*

PUBLIC OFFICERS—See *Officers of the Court.*

definition of, (C. 2), 173.

certain suits against, barred, (A. 19), 91.

suits by and against, (C. 416—27), 63, 264—67.

PURDAH WOMEN—See *Privilege.*

not exempt from arrest in execution of decree, (C. 640), 302.

QUESTIONS—

of law how to be dealt with and determined, (A. 16), 82.

which may be referred for opinion of High Court, (A. 69, C. 617), 138, 300.

of fact, difference of opinion amongst Judges on, (A. 11), 79.

to be decided by Court in execution of decree, (C. 244), 226.

RANK—

and precedence of Judges, (A. 8), 78.

exemption from personal appearance in Court of persons of, (C. 641), 302.

RECEIPT—

to be granted for all money paid into Court, (R. 5), 7, 309.

no money paid out or business transacted without production of, (Apx. A. 30-34), 7, 325-26.

to be given for documents returned, (A. 25), 100.

for price of property sold in execution of decree to be granted by officer holding sale, (C. 297), 244.

RECOGNIZED AGENTS—See *Agent.*

RECORD—

of suits, 30-31.

when amended to be signed by Judge, (C. 53), 31, 190.

defence to be entered on, 30.

decree to be entered on, 37.

certified copy of, furnished to parties — application, (C. 217), 39, 221.

in cases of contempt of Court, (A. 84), 148-49.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY—

chapter on, 57-58, 116—26.

plaint for, (R. 53), 58, 319.

annual value of tenement to be stated in, *ib.*

fees on, (A. 71-72), 58, 141-42, 383.

when summons for, may issue, (A. 41), 58, 116—21.

question of title cannot be tried, 117.

summons for, how served, (A. 42), 58, 121-22.

order for, (A. 43), 58, 122-23.

bailiff's authority under, (A. 44), 123.

bar to proceedings against Judge or officer, *ib.*

**RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY—(continued).**

- applicant for, when not to be deemed ■ trespasser, (A. 45), 124.
- occupant may sue for compensation, *ib.*
- liability of applicant obtaining order for, when not entitled, (A. 46), 124-25.
- stay of proceedings for, on giving security, (A. 47), 58, 125-26.
- form of security bond, (Apx. L. 17), 424.
- proceedings for, how regulated, (A. 48), 125.
- no bar to suit to try title, (A. 49), 58, 126.

**REFERENCE—**

- to previous Acts, (A. 2, C. 3), 75, 175.
- when Judges differ in opinion on question of fact, (A. 11), 79.
- on question of law, (A. 69), 138.

**REFERENCE TO HIGH COURT—**

- chapter on, 54, 138.
- in what cases allowed, (A. 69, C. 617), 54, 138-40, 300.
- when compulsory, (A. 69), 54, 138.
- optional, (C. 617), 54, 300.
- security for amount of judgment and costs to be given, (A. 70), 54, 140-41.
- when to be furnished, *ib.*
- effect of not furnishing within time allowed, *ib.*
- not required when Judge submits question, (C. 617), 55, 300.
- scale of costs for, 55, 326.
- statement of case to be drawn up, (A. 69, C. 617), 54, 138, 300.
- Court may reserve judgment or give judgment contingent upon opinion of High Court, (A. 69, C. 618), 55, 138, 300.
- execution to be stayed pending receipt of judgment of High Court, (C. 618), 301.
- costs of, to be costs of the suit, (C. 620), 55, 301.
- order of High Court relative to hearing of, by High Court, (Apx. D.), 379-80.
- employment and fees of counsel in, *ib.*

**REFERENCE TO ARBITRATION—See *Arbitration*.****REFUND—See *Money and Payment*.****REGISTERS, books and accounts to be kept, (A. 90), 152.****REGISTRAR—See *Officers of the Court*.**

- appointment, suspension and removal of, (A. 13), 80.
- ministerial duties of, how assigned, *ib.*
- has powers of a Judge in suits not exceeding Rs. 20, (A. 14), 80-81.
- must not practise or trade, (A. 15), 81.
- empowered to perform certain non-judicial and quasi-judicial acts, (A. 33), 108.
- to hear and determine suits like ■ Judge, (A. 34), *ib.*
- may execute decrees with powers of a Judge, (A. 35), 109.
- decrees and orders of, subject to new trial, (A. 36), *ib.*
- correspondence to be addressed to, 72.

**REGISTRAR—***(continued)*.

may make orders for payment of money, (Apx. A. 30, 32), 325-26.  
may state case for opinion of Chief Judge, (C. 646, R. 3), 304, 309.

**RE-HEARING BY HIGH COURT—**

chapter on, 55-56, 114—16.

when allowed, (A. 38), 55, 114-15.

application for, when to be made, *ib.*

to be supported by affidavits and certificate, *ib.*

proviso relating to stay and execution of decree pending, *ib.*

fees to be paid upon, (A. 71), 56, 141.

procedure at, (A. 39), 56, 115-16.

execution of decree of High Court, (A. 40), 56, 116.

**REJECTION—**

of plaint when optional, (C. 53), 190.

when compulsory, (C. 54), *ib.*

of written statement, (C. 116), 205.

of irrelevant or inadmissible documents, (C. 140), 208.

**RELEASE—**See *Execution of Decree*.**RELINQUISHMENT—**

of portion of claim, to bring suit within jurisdiction, (C. 43), 3, 185.

effect of, by plaintiff of part of claim, (C. 43), *ib.*

**REMOVAL—**See *Minors and Execution of Decree*.**RENT—**See *Distress*.**REPEAL** of Enactments, (A. 2, C. 3), 74, 174.**REPEALED ACTS**, Schedule of, 155.**REPLY—**See *Hearing*.**REPRESENTATIVE—**See *Plaint and Execution of Decree*.**RESIDENCE—**See *Jurisdiction and Plaint*.**RESISTANCE—**See *Execution of Decree*.**RES JUDICATA**, provisions relating to, (C. 13), 177.**RESTITUTION** of conjugal rights, suits for, barred, (A. 19), 92.**REVENUE—**

powers of Collector of Calcutta in regard to collection of land, (A. 3), 75-6.

suits concerning Government, barred, (A. 19), 91.

## RULES—

- of practice, power of Court to make, (A. 9), 78.
- of the Court, 308—21.
- for officers of Court and transaction of business in offices of the Court, (Apx. A.), 322—26.
- relating to hearing of references, (Apx. D ), 379-80.
- stamps used to denote fees, (Apx. E.), 380—82.
- fees to legal practitioners, (Apx. G.) 405-7.
- execution of decrees during holidays, (Apx. H.), 408.

SALE—See *Distress and Execution of Decree*.

SATISFACTION—See *Execution of Decree*.

## SCALE—

- of fees leviable in suits, (Apx. F.), 383—405.
- for processes, 161.
- in distrains for rent, 160.
- witnesses' expenses, 321.
- costs for references, 55, 326.
- fees of counsel employed in references, 380.
- attorney employed in references, *ib*.
- to legal practitioners, (Apx. G.), 405—7.
- stamp-duty on bonds under s. 29, (Apx. H.), 408.1
- fees for serving processes sent to other Courts, (Apx. I.), 409-10.
- subsistence-money for judgment-debtors, (Apx. J.), 410-11.
- imprisonment for judgment-debtors, (Apx. K.), 411.
- feeding charges for livestock attached, (Apx. M.), 432.

## SCHEDULE—

- of enactments repealed, 155.
- portions of Civil Procedure Code extending to the Court, 156—58.
- forms in distraint proceedings, 158—60.

## SEAL OF THE COURT—

- Court to use a seal, (A. 12), 79.
- all summonses and process to bear, (C. 64, 251), 192, 229, 322.

SEAMEN, service on, (R. 20), 10, 312.

SECOND SUMMONS—See *Hearing and Summons*.

SECRETARY OF STATE—See *Government*.

SECURITY—See *Appraisers, Costs, Execution of Decree, New Trial, and Reference to High Court*.

SERVICE—See *Summons and Execution of Decree*.

SERVING OFFICER—See *Officers of the Court*.



**SET-OFF—**

when allowed, (A. 18, C. 111), 35, 83, 87, 203.  
must be in writing and set out particulars, 35, 203.  
time for filing, (R. 28), 35, 314.  
plaintiff to be furnished with copy of, *ib.*  
extension of time for filing, how obtained, 35.  
enquiry into, at hearing, 203.  
effect of, 204.

**SETTING ASIDE—See *New Trial* and *Distress*.**

*ex parte* orders and decrees, 51.  
award, grounds for, (C. 521), 292.

**SETTLEMENT—See *Compromise*.****SHARE—See *Execution of Decree*.****SHOP-BOOK, entries in, how placed on record, (C. 141), 33, 208.****SIGNATURE—**

of plaint, (C. 51), 4, 189.  
verification, (C. 52), 5, 190.  
written statement, (C. 115), 205.  
amendments by Judge, (C. 53), 31, 190.  
summons, (C. 64), 191.  
warrant, (C. 251), 229.  
award by arbitrator, (C. 516), 291.

**SIGNED, definition of, (C. 2), 173.****SITTINGS—**

of the Court, 20.  
holidays observed by the Court, (Apx. II.), 407.

**SLANDER, suits for, barred, (A. 19), 92.****SMALL CAUSE COURTS—**

definition of Presidency, (A. 4), 76.  
style of Presidency, (A. 5), *ib.*

**SOLDIERS—See *Military Men*.****SPECIAL CASE—**

arbitrators or umpire may state, (C. 517), 291.  
by agreement of parties for Court's opinion, (C. 527), 69, 295.

**SPECIFIC MOVEABLES—See *Execution of Decree*.****SPLITTING DEMANDS—See *Plaint*.**

not allowed in respect of the same cause of action, 3.

**STAKEHOLDER—See *Interpleader*.**

**STAMPS**—See *Fees*.

all court-fees collected by, 6.  
rules relating to, (Apx. E.), 380—82.  
on bond under s. 29, (Apx. H.), 408.

**STATEMENT**—See *Written Statement*.

concise, when to be filed by plaintiff, (R. 13), 8, 311, 330.  
forms of, 374—79.  
of case for opinion of High Court, (A. 69, C. 617), 54, 138, 300.  
by Registrar for opinion of Judge, (C. 646, R. 3), 304, 309.

**STATUTES** repealed, 155.**STAY OF EXECUTION**—See *Execution of Decree*.**STAY OF PROCEEDINGS**—

where all defendants do not reside within jurisdiction, (C. 20), 178.  
on death or removal of next friend, (C. 448), 272.

**STAY OF SALE**—See *Execution of Decree*.**SUBPŒNA**—See *Witnesses*.**SUBSCRIPTION**—See *Signature*.**SUBSISTENCE ALLOWANCE**—See *Execution of Decree*.  
scale of, (Apx. I.), 410.**SUBSTITUTED SERVICE**—See *Summons*.**SUBSTITUTION**—See *Parties*.**SUITS**—See *Hearing, Jurisdiction and Parties*.

how commenced, 1.  
in which Court has jurisdiction, (A. 18), 82—91.  
no jurisdiction, (A. 19), 91—94.  
which Court may try by consent of parties, (A. 20), 94-95.  
by and against officers of Court, (A. 21), 95-96.  
procedure in, (A. 23), 97-98.

**SUMMARY PROCEDURE**—See *Negotiable Instruments*.**SUMMONS**—

issue and service of, chapter on, 7—12, 191—98.  
to issue on filing of plaint, (C. 64), 8, 191.  
“cause of action” to be contained in, or concise statement, served with, (R. 13), 8, 311.  
for final disposal of suit, (C. 71), 8, 193.  
to be issued and dated as of the day on which plaint filed, (R. 14), 8, 311.  
to state day fixed for defendant’s appearance, (C. 69), 192.  
when returnable ordinarily, (R. 15), 8, 311.  
may be returnable at any time under special circumstances, and by order of a Judge, (R. 16), *ib*.  
ordinary time for serving, before returnable date, (R. 16), *ib*.  
meaning of “clear days,” 8.

SUMMONS—(*continued*).

- time allowed in special cases, 9.
- to defendant out of jurisdiction, (R. 17), 9, 312.
- when to direct personal appearance of non-resident defendant, (C. 67), 192.
- directs production of documents and witnesses relating to defence, (C. 70-71), 9, 192-93.
- for documents in defendant's possession on which plaintiff relies, 9.
- application for service of, (Apx. A., 8), 9, 323.
- plaintiff or his man to accompany officer serving, (R. 19), 9, 312.
- to produce Court-receipt, 9.
- delivery of, for service, (C. 72), 193.
- mode of service of, (C. 73), *ib.*
- how to be served, (C. 74-77, R. 18), 10, 193-94, 312.
- examination of serving officer, (C. 82), 194.
- substituted service, when allowed, (C. 82), 10, 194.
- examination of party and officer, *ib.*
- time for appearance to be fixed, (C. 84), 10, 195.
- effect of, (C. 83), *ib.*
- service of, on board ship, vessel or boat, (R. 20), 10, 312.
- on pilot or customs officer, (R. 21), 11, 313.
- service book to be kept, (R. 7), 11, 310.
- service on defendant out of jurisdiction, (C. 85), 11, 195.
- in jail, (C. 87-8), 11, 196.
- out of British India, (C. 89, R. 23), 11, 197, 313.
- through British resident, &c., (C. 90), 12, 197.
- officers and soldiers, (C. 468), 12, 277.
- substitution of letter for, (C. 91), 197.
- mode of sending letter, (C. 92), 198.
- cost of issuing and serving to be paid by party applying, (C. 93), *ib.*
- postage, (C. 95), *ib.*
- days on which, cannot be served, (R. 27), 313.
- for recovery of possession of immoveable property, how served, (A. 42), 58, 121-22.

TENANT—See *Distress for Rent and Recovery of Possession of Immoveable Property*.

TENDER—See *Deposit*.

of amends, (A. 96), 154.

TITLE—See *Jurisdiction*.

recovery of possession of immoveable property no bar to suit to try, (A. 49), 126.

TRADE, person carrying on, for parties out of jurisdiction is recognized agent, [C. 37(c)], 184.

TRANSFER—

of suits from one bench to another, 20, 78, 81, 109.

by High Court to another Court, (C. 25), 57, 179.



TRAVELLING—See *Witnesses*.

TRIAL—See *Hearing* and *New Trial*.

TRUSTEES—Suits by and against, (C. 437—39), 65, 270.

UMPIRE—See *Arbitration*.

UNSOUND MIND, suits by and against persons of, (C. 440—64), 66-7, 270—76.

VAKEEL—See *Legal Practitioners*.

VALUATION—See *Plaint*.

VERIFICATION—See *Plaint* and *Written Statement*.

WAGES, minors may sue for, as if of full age, (A. 32), 3, 107.

WARDS, provisions of Code not applicable to, of Court, (C. 464), 67, 276.

WARRANT—See *Execution of Decree*.

WIFE—See *Marriage* and *Execution of Decree*.

WITHDRAWAL OF SUITS—

when suit may be withdrawn, (C. 373), 19, 255-56.  
limitation not affected by first suit, (C. 374), *ib*.

WITNESSES—See *Commission*.

summoning and attendance of, chapter on, 12—16, 211—16.  
when summons to give evidence or produce documents may be obtained, (C. 159), 12, 211.  
    application how made, 12-13.  
    fee on, *ib*.  
particulars to be contained in summons, (C. 163), 213.  
    how served, (C. 166), 14, 213.  
    time for serving, (C. 167), 14, 214.  
expenses of, to be paid, (C. 160, R. 29), 13, 212, 314.  
    officers of Court not entitled to, 13.  
    for adjourned hearings, *ib*.  
    tender, when to be made, (C. 161, R. 31), 13, 212, 314.  
    payment should be demanded before giving evidence, (R. 30), *ib*.  
    travelling expenses of non-resident, (R. 32), 315.  
    procedure where insufficient sum paid, (C. 162), 212.  
    if, detained more than one day, *ib*.  
    non-payment, not a ground for disobeying summons, 14.  
    non-payment or non-tender sufficient ground for refusal to arrest, (C. 174), 14.  
    scale of, 321.  
summons to produce document, (C. 164), 14, 213.

## WITNESSES—(continued).

Court may call on anyone present to give evidence, &c., (C. 165), 14, 213.

summon, not named, &c., (C. 171), 14, 214.

duty of, summoned to give evidence or produce document, (C. 172), 214.

when, may cease to attend, (C. 173), 15, 214.

consequences of failure to comply with summons, (C. 174), 15, 215.

bail-bond for appearance of, (Apx. L., 21), 15, 427.

persons not required to attend in person, (C. 176), 15, 215.

consequence of refusal of parties to give evidence as, (C. 177), 15, 216.

rules as to, to apply to parties, (C. 178), *ib.*

when, may be examined immediately, (C. 192), 16, 217.

WOMEN—See *Privilege and Execution of Decree.*

WRITTEN, definition of, (C. 2), 173.

WRITTEN STATEMENTS—See *Set-off.*

in cases of set-off, (A. 24), 98.

in other cases, if required by Court, *ib.*

rules relating to, 99.

particulars to be given in, (C. 111), 203.

frame of, (C. 114), 205.

to be signed and verified, (C. 115), *ib.*

power of Court to amend, (C. 116), *ib.*

effect of rejection of, *ib.*

ZANANA—See *Execution of Decree.*

seizure of property in, (C. 271), 237.